DIARY

Book 517

April 16 and 17, 1942

- G -

- L -

- M -

- O -

- P -

- R -

- S -

- T -

TREASURY DEPARTMENT
Washington

FOR IMMEDIATE RELEASE,
Thursday, April 16, 1942.

Press Service
No. 31-21

Secretary of the Treasury Morgenthau today announced the final subscription and allotment figures with respect to the current offering of 1/2 percent Treasury Certificates of Indebtedness of Series A-1942.

Subscriptions and allotments were divided among the several Federal Reserve Districts and the Treasury as follows:

Federal Reserve District	Total Subscriptions Received	Total Subscriptions Allotted
Boston	$ 212,414,000	$ 104,289,000
New York	1,724,584,000	832,804,000
Philadelphia	111,799,000	55,613,000
Cleveland	150,548,000	75,334,000
Richmond	77,737,000	39,828,000
Atlanta	73,532,000	37,200,000
Chicago	368,055,000	185,568,000
St. Louis	71,103,000	37,386,000
Minneapolis	50,052,000	27,087,000
Kansas City	44,835,000	23,493,000
Dallas	47,634,000	24,526,000
San Francisco	129,772,000	63,774,000
Treasury	185,000	98,000
TOTAL	$3,062,250,000	$1,507,000,000

-oOo-

April 16, 1942

The Secretary this morning gave the following instructions to Mr. Thompson:

I want to get out an order to the 9:30 group that no communications should go out of the Treasury with my name attached that I personally do not execute. If I am not here, telegrams or communications should be signed by an Acting Secretary.

April 16, 1942
9:55 a.m.

HMJr: Hello.

Operator: Congressman Doughton.

HMJr: Hello.

Operator: Go ahead.

HMJr: Hello.

Robert Doughton: All right, Henry.

HMJr: How are you?

D: First class. How are you?

HMJr: Fine. Bob.....

D: Yeah.

HMJr: .....do you think that you could tell me fairly definitely when we would go on this morning, because some of these gentlemen have an appointment with the President at 11:45.

D: Well, I'll let that - if you - at when?

HMJr: At 11:45.

D: Well, if they do that and they got long, they better go on ahead of Paul, if it would be agreeable with him.....

HMJr: Well.....

D: .....and you all, why we could shift - change places with them.

HMJr: Well, how would it.....

D: If they were here - you see we're going to start right now.

HMJr: Well, suppose - could we say that we could go on, say, at sharp eleven?

D: Yes, we can let Paul - let's say at sharp eleven. I'll let - if Paul's not through by that time, why we'll just suspend him until afternoon.

HMJr: And we'll go on at eleven.

D: Yeah, and you'll be here now ready to go on at eleven, and I'll have that understanding.

HMJr: Yeah. Did you ask Walter George to come over?

D: I did. I called him and didn't get him, and told his folks, and I'll call him again now.

HMJr: Fine.

D: He said he'd come, and I told his secretary, and I guess he'll be coming. I'll call him right now again.

HMJr: Senator.....

D: Eleven o'clock.

HMJr: Senator Vandenberg, coming from Michigan, might be interested in this.

D: Well, that's fine. Well, I'll call him right now.

HMJr: Well, then, we'll be up there ready to put on a show at eleven.

D: Fine. Thank you.

HMJr: It's very kind of you to have us up.

5

THE WHITE HOUSE
WASHINGTON

HM Jr to handle

4-16-42

MEMORANDUM FOR THE PRESIDENT:

Congressman McCormack phoned that in the Deficiency Appropriation Bill, the House put in the 6% limitation and the Senate put in a more liberal limitation.

He says that the Speaker, the House Conferees and he, himself, all feel this is not a desirable way to legislate — to put any limitation of profits in an appropriation bill. It should be done through excess profits - in the Ways and Means Committee - or through the Naval Affairs Committee, after full consideration of all factors involved.

McCormack says that he, the Speaker and the House Conferees think all the provisions in the Deficiency Appropriation Bill, now in conference, should be stricken out. The Conferees are meeting this afternoon. Senator Barkley is out of town and so far could not be reached.

If the President agrees, McCormack hopes he will take action to see what can be done with the Senate Conferees to have them recede, and strike out any and all provisions."

EMW
E.M.W.

UNREVISED

REVENUE REVISION OF 1942

HEARINGS

BEFORE THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

SEVENTY-SEVENTH CONGRESS

SECOND SESSION

ON

REVENUE REVISION OF 1942

PART 30

APRIL 16, 1942

Printed for the use of the Committee on Ways and Means

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1942

69693

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES

ROBERT L. DOUGHTON, North Carolina, Chairman

THOMAS H. CULLEN, New York
JERE COOPER, Tennessee
JOHN W. BOEHNE, Jr., Indiana
WESLEY E. DISNEY, Oklahoma
FRANK H. BUCK, California
RICHARD M. DUNCAN, Missouri
JOHN D. DINGELL, Michigan
A. WILLIS ROBERTSON, Virginia
PATRICK J. BOLAND, Pennsylvania
MILTON H. WEST, Texas
RAYMOND S. McKEOUGH, Illinois
KNUTE HILL, Washington
ARTHUR D. HEALEY, Massachusetts
AARON LANE FORD, Mississippi

ALLEN T. TREADWAY, Massachusetts
FRANK CROWTHER, New York
HAROLD KNUTSON, Minnesota
DANIEL A. REED, New York
ROY O. WOODRUFF, Michigan
THOMAS A. JENKINS, Ohio
DONALD H. McLEAN, New Jersey
BERTRAND W. GEARHART, California
FRANK CARLSON, Kansas
BENJAMIN JARRETT, Pennsylvania

BARRON K. GRIER, Clerk
MARSON Y. MCCANLESS, Assistant Clerk

CONTENTS

REVENUE REVISION OF 1942

THURSDAY, APRIL 16, 1942

House of Representatives,
Committee on Ways and Means,
Washington, D. C.

The committee met at 10 a. m., Hon. Robert L. Doughton (chairman) presiding.

The Chairman. The committee will please come to order.

Mr. Treadway. I ask unanimous consent to insert statements by Mr. Charles M. Arnold, one of our Connecticut Valley tobacco growers from Southwick, Mass., and Mr. George F. Gershel, of Hartford, Conn.

The Chairman. The chair hears no objection, so they will be inserted.

(The statements referred to are as follows:)

Statement of Charles M. Arnold, Southwick, Mass., Representing the Connecticut Valley Shade Growing Tobacco Farmers

I speak for the Connecticut Valley shade growing tobacco farmers. They operate in Connecticut and Massachusetts, with a present acreage of about 8,500. It is estimated that our product wraps approximately 2,000,000,000 cigars annually, and that is its only use. The industry represents an investment of over $10,000,000. Originally it was conducted by a considerable number of farmers, but since the advent of the two-for-a-nickel cigars the industry has suffered to the extent that 50 percent of the growers have been forced out of the business. Unless tax rates are so adjusted as to protect our market, with due regard to the necessity of providing for necessary governmental revenue, we will be in a very precarious situation.

I have today carefully read the testimony given on Wednesday, April 8, by Mr. Alvaro M. Garcia, president of the Cigar Manufacturers' Association of America, and the brief filed by him at that time. In my judgment, his presentation measures up to what would be for the best interests of the Government, the farmer, the packer, and others concerned. Accordingly, we urge that the recommendations of Mr. Garcia and his associates be favorably considered by the Ways and Means Committee.

Charles M. Arnold.

Statement of George F. Gershel, Representing the Gershel-Kaffenburgh Tobacco Co., Hartford, Conn.

The proposed revenue rates of cigars contained in the new tax bill are, from the standpoint of Connecticut wrapper and binder tobaccos, ruinous.

Connecticut tobacco is produced primarily for 5, 10, and 2 for a quarter and higher-priced cigars.

Situated as we are in the most highly industrialized section in the country, we are where we must compete with industrial wage rates, which, coupled with the fact that Connecticut tobaccos require the greatest amount of fertilizer and the finest quality of any type of tobacco raised in the world, makes it imperative that the cigar manufacturer to whom we must sell our tobacco be permitted to manufacture and sell his cigars at a slight profit.

The proposed rates of $2.50 per 1,000 on the 2-for-5 cigars and under would freeze the 2-for-5 cigar in this price class and would force all higher priced cigars to be increased in price, with the result that the 2-for-5 cigar would immediately outstrip all other cigars, thus placing our domestic tobacco industry in the position of having to sell this tobacco for those cheap cigars, which would necessarily mean selling our product at a loss.

We feel most strenuously that the rates proposed by the Cigar Manufacturers of America are the proper rates in order to maintain the balance between the cheap cigar and the most expensive cigar, so that we, as farmers, will be able to produce and sell at a profit to our customer the cigar manufacturer, who in turn may be permitted to sell his cigars at a profit and still pay living prices to the farmer, his worker, and his supplier of other materials.

George F. Gershel,
The Gershel-Kaffenburgh Tobacco Co.,
801 Windsor Street,
Hartford, Conn.

The Chairman. The first witness this morning is Hon. Randolph Paul, tax adviser to the Secretary of the Treasury.

Mr. Paul, you may proceed.

STATEMENT OF RANDOLPH PAUL, SPECIAL TAX ADVISER TO THE SECRETARY OF THE TREASURY

Mr. Paul. Mr. Chairman and members of the committee, in statements before your committee on March 3, 1942, the Treasury recommended the elimination of (1) percentage depletion, and (2) the privilege available to the oil and gas and mining industries of expensive development costs.[1] Several witnesses have appeared before your committee in opposition to these recommendations. I should like now to present evidence supporting the Treasury's position and to refute the arguments made by the representatives of these industries in favor of existing provisions of the statute.

1. ELIMINATION OF PERCENTAGE DEPLETION

The Treasury believes that the favored treatment to a particular industrial group involved in percentage depletion should not be retained in an all-out war tax program. Percentage depletion does not appreciably stimulate exploration and discovery. It is not essential to the maintenance of the output of stripper wells. Its elimination will in no way endanger the supply of raw materials needed for the war effort. The continuance of the special privilege involved in percentage depletion would allow the oil and mineral industries to escape their fair share of the tax burden at a time when millions of small taxpayers are being asked to save and sacrifice for the winning of the war. The continuance of the provision at such a time cannot but adversely affect the morale of the American taxpayer.

It is estimated that at 1942 business levels and proposed 1942 tax rates the elimination of percentage depletion and the substitution of cost depletion will increase the revenue by $117,000,000.[2] Approximately 75 percent of this total is accounted for by oil and gas properties, the rest by sulfur, metal, and coal mines.

[1] For oil and gas wells, the regulations give the taxpayer the option of charging "intangible development costs" to expense, or to capital account to be recovered through depletion. The regulations define "intangible development costs" as "wages, fuel, repairs, hauling, supplies, etc., incident to and necessary for the drilling of wells" (regulations 103, sec. 19.23 (m) 16). For mines, the regulations provide that all development costs may be charged to expense except development costs in excess of receipts while the mine is in the development stage. The latter shall be charged to capital account recoverable through depletion (sec. 19.23 (m) 15). Development costs for mines are expenditures incurred in the development of the mine other than expenditures on depreciable property.

[2] At existing rates the revenue increase is estimated at $97,000,000.

A. *Percentage depletion is a special privilege.*—The 1941 Revenue Act levied a combined normal and surtax rate of 31 percent on the net income of corporations in excess of $25,000. In addition, an excess-profits tax was imposed with rates ranging up to 60 percent. Yet many oil companies pay extremely low income taxes, and most oil companies pay no excess-profits taxes. Some actual examples of oil companies that made provision for Federal income taxes of less than 31 percent of net income are listed in exhibit 1. Each of the 4 major oil companies listed in that exhibit set aside for Federal income and excess-profits taxes less than 26 percent of its 1941 net income reported to stockholders. The 13 minor companies, which generally speaking were engaged more exclusively in production, set aside an even smaller part of income, the percentage varying from 18 percent to as little as 2 percent.

The striking difference between the percentage of income absorbed by taxes for these companies and the statutory tax rates is to some extent attributable to differences between book income and taxable income common to all corporations. In the main, however, it is attributable to the special percentage depletion. The companies ordinarily report depletion to their stockholders on a cost basis, but receive for tax purposes a very much larger allowance of percentage depletion.

Despite the statutory provision limiting percentage depletion to 50 percent of the net income from each property, the use of percentage depletion instead of cost depletion enables many companies to cut their taxable income by much more than 50 percent.[3] Exhibit 2 gives a few actual examples. For the first two companies cited, percentage depletion converted sizable net incomes into deficits, for the third company, it reduced net income by more than 75 percent, for the fourth company, it almost completely wiped out net income. The examples given in this exhibit are not untypical.

The amount freed from taxation through percentage depletion bears little or no relation to the actual cost of the depleted property. Percentage depletion continues even after 100 percent of the cost of the property has been recovered. For example, one of the leading oil companies in the East Texas field still has in the ground more than three-fourths of the original oil reserves in 10 oil properties. Yet this company has recovered through percentage depletion, and the related option to expense intangible development expense, more than the entire cost of the property and of intangible development. If, on the remaining reserves, this company should obtain depletion allowances at the rate enjoyed thus far, the aggregate deductions for depletion would approximate five times the cost of the properties, and the aggregate deduction for both depletion and intangible development costs would approximate three times the cost of the properties plus intangible development costs (exhibit 3).

B. *The elimination of percentage depletion will not endanger the supply of raw materials needed for the war effort.*—The claim that the elimination of percentage depletion will endanger the supply of raw materials needed for the war effort cannot be accepted.

[3] Reductions in taxable income by more than 50 percent, despite the statutory limitation, are possible because the law specifies that percentage depletion be computed with respect to each property separately. Consequently, after the taxable income of properties showing net income has been reduced by a maximum of 50 percent by depletion allowances, it can be reduced still further by the deduction of losses on other properties.

1. *The oil industry*—(*a*) *Production and reserves.*—The production of crude oil in 1941 was the highest in our history. At the same time the known reserves of crude oil increased to an all-time high. Total reserves of 20,800,000,000 barrels were about 15 times the output in 1941 (exhibit 4). Even the record output of 1,400,000,000 barrels in 1941 was below the maximum achievable. The production of oil in at least some States, including Texas, is still proceeding under proration regulations designed to reduce output to probable market demand.

While military requirements for oil products in 1942 will increase very substantially over 1941, civilian consumption will decrease greatly because of the transportation and rubber shortage, so that total consumption is not likely to expand and may even decline. The loss of oil-producing areas in the Far East will throw a greater burden upon American oil resources; but the shortage of tankers will make it necessary to replace the supplies formerly produced in these areas by restricting civilian consumption rather than by expanding production in this country. Recent increases in the seriousness of the transportation shortage have already led to a reduction of production. The Office of Petroleum Coordinator early in March ordered a widespread reduction in output throughout the Southwest.[4] Later, the State authorities in Texas ordered 18 shut-down days in April. This marks the first time in the history of proration in Texas that the oil wells have been ordered to shut down for more days than they are permitted to produce.[5] It is clear that the problem of oil supply is a problem of transportation and not of production or limited reserves.

(*b*) *Stripper wells.*—Witnesses opposing the Treasury's recommendations have claimed that their adoption would lead to the widespread abandonment of stripper wells—the wells with relatively low output and high cost of production. Clearly, the elimination of percentage depletion would not have any such effect. Most stripper wells produce small amounts of oil under conditions that leave little or no book profit. The operators of such wells get little, if any, benefit from percentage depletion because of the statutory limitation of percentage depletion to 50 percent of net income from the property. The continued operation of these properties cannot be dependent on the continuance of percentage depletion. They are continued in operation because current revenues exceed "out of pocket" costs, although they may not exceed total cost, including depreciation, depletion, and overhead.

In a sample study, based on the tax returns for a large number of properties in Pennsylvania, it has been found that of the properties producing fewer than 400 barrels a year nearly one-half showed no net income even before any allowance for depletion. These properties get no percentage depletion under existing law. Other properties get only a negligible amount of depletion because of the 50 percent net income limitation. Only 1 out of 12 properties got percentage depletion equal to 27½ percent of gross income, the maximum amount allowed by existing law. In order to qualify for this maximum percentage depletion allowance, these properties had to have net incomes in excess of 2 times 27½ percent or 55 percent of gross income. Such a large margin of profit is not characteristic of the stripper well. The salvation of the stripper well industry lies in advances in crude-oil prices rather than the percentage depletion provision.

[4] Wall Street Journal, March 5, 1942.
[5] Oil and Gas Journal, April 2, 1942, p. 16.

In support of the claim that the elimination of percentage depletion would lead to the abandonment of stripper wells, it has been maintained that the provision for percentage depletion introduced in the Revenue Act of 1926 led to a substantial increase in production from the eastern part of the United States. It is true that there was a substantial increase in the production of crude oil in Pennsylvania and New York after 1926. However, this increase seems directly traceable to the development of water flooding methods, methods that were first permitted by local law in 1921.[6] The resulting increase in production manifested itself prior to the enactment of percentage depletion. Between 1921 and 1926 there was a steady increase in production, the increases being minor from 1921 to 1924, but substantial from 1924 to 1925, and again from 1925 to 1926. Naturally, the full effect of this new technique for extracting oil was not felt at once and continued to operate after 1926 (exhibit 5).

(*c*) *The effect of price.*—The effect of percentage depletion on production is negligible compared to the effect of price changes. In 1941 the tax relief attributable to percentage depletion amounted to about 5 cents per barrel of oil. In that year the price of oil went up 8 cents a barrel. In Pennsylvania it rose by even more—since August 1940, by 90 cents a barrel including a recent increase of 25 cents per barrel granted by the Office of Price Administration to stimulate output in that area.

2. *The mining industry.*—The conditions of supply vary widely for different metals. Some are in abundant supply; others are limited as to known deposits; still others, like aluminum and manganese, are limited by the availability of power, processing plants, and materials for exploitation, for example, explosives and mining equipment made of steel.

These variations in supply conditions have been recognized by the agencies dealing with the problem of war production. In the case of some metals, premium prices have been established to stimulate production; in other cases direct assistance in adding to equipment for recovery has been extended. This approach clearly indicates the diversity of situations in the mineral industry and the difficulty of trying to accomplish specific results by any general tax relief such as percentage depletion.

Representatives of the mining industry have pointed out that the acceleration of production for war purposes will subject the industry to greatly increased income and excess-profits taxes at the time when it is exhausting reserves that might be produced in later years under lower tax rates. The Treasury is aware that producers of exhaustible mineral resources face a special problem in increasing production by using available reserves, and is studying methods of providing appropriate relief under the excess-profits tax. This problem, which involves both price policy and tax policy, affects all producers in the industry and not only the relatively few who now benefit from percentage depletion. Any solution of this problem should be appli-

[6] Pennsylvania Statutes 1920, 16, 268a–3, Acts 1921, p. 912, 3 (amended 1929, p. 821).

cable to the large number of producers who now get no benefit from percentage depletion as well as to those who do.

C. *Percentage depletion cannot be justified as a stimulus to exploration and discovery.*—The original enactment of discovery depletion in 1918 was prompted by a fear of mineral shortages and the desire of Congress to stimulate the discovery of mineral properties and compensate for the hazard involved in prospecting.[7] The shift to percentage depletion in 1926 was in the interest of simplicity of administration; problems involved in determining which taxpayer was entitled to the benefit of the discovery, the exact date when the discovery was made, and the value of discovery wells within 30 days of discovery were difficult and led to extensive controversy.

We now know that the 1918 fear of oil shortages was unfounded. It is also clear that we did not need this special discovery provision to obtain exploitation of our natural resources, and that the provision has been extremely costly in terms of the revenue. It is not true that the development occurring between 1918 and the present time has been the result of tax incentives. It has been due principally to high prices and improvements in the technique of discovery.

1. *The oil industry*—(a) *The importance of other factors.*—The tremendous post-war expansion of the oil industry is attributable to the factors mentioned and not, as witnesses before your committee have claimed, to the enactment of the discovery depletion provision by Congress in the 1918 act. During this period the automobile industry expanded enormously. The extended use of automotive transportation created a strong demand for oil products which led, in turn, to a high level of crude oil prices; it also stimulated technical advances to raise the gasoline recovery ratio. It was these factors, and not percentage depletion, that accounted for the increase in reserves and in output.

(i) *The influence of price.*—The importance of the price of oil products in stimulating or retarding the search for oil is clearly revealed by exhibit 6 and chart 1 which shows for the period 1917 to 1941 the number of wells drilled and the average price of oil per barrel. In all except 3 of the 25 years covered by the exhibit the number of wells drilled changed in the same direction as the average price per barrel, rising when the price rose and declining when the price declined.

(ii) *The influence of technical developments.*—While price changes have been the major stimulus to the search for new oil, the effectiveness of this search has also depended in large part upon developments in the technique of discovery and on pure chance. Immediately after the First World War there was a great advance in the application of scientific knowledge to the discovery of oil. According to a study by the National Research Project, scientific approaches have accounted for an increasing proportion of oil discoveries, while wildcatting based on "hunches" has become relatively less significant. According to this study, the ultimate production from wells discovered by scientific methods between 1922 and 1938 was estimated at about 14,000,000,000 barrels, whereas the corresponding figure for wells discovered by other methods was only slightly over 5,000,000,000 barrels (exhibit 7). The

[7] S. Rept. No. 617, 65th Cong., 3d sess., p. 6. S. Doc. No. 289, 65th Cong., 2d sess., p. 5.

application of scientific knowledge to the search for oil has not, however, reduced the discovery of oil to a routine matter. The unusual strike, such as that in east Texas, respects neither price nor technology. Such exceptionally fortunate discoveries of large pools are naturally irregular. Provisions enacted in the law cannot make them otherwise.

(iii) *The influence of war priorities.*—Percentage depletion should be a particularly negligible factor in the discovery of oil during the war period. The shortage of steel has led the War Production Board to restrict the use of steel in drilling oil wells to such an extent that drilling will be curtailed by about 40 percent in 1942. This restriction is limited primarily to the drilling of development wells rather than discovery or wildcat wells. The latter have been granted a priority rating of A-2, the former of A-8. In addition, the Office of Petroleum Coordinator is urging the industry to drill at least 4,000 wildcat wells in 1942 compared with 3,100 drilled last year, even though the total number of wells drilled will probably be reduced from 32,000 in 1941 to fewer than 19,000 in 1942. The forced restriction in the drilling of development wells will release substantial funds for the drilling of the wildcat wells. The saving from the drilling of fewer development wells in 1942 will exceed the cost of all wildcast wells expected to be drilled in 1942. The shortages necessitating curtailments in the drilling of development wells are likely to continue, and, indeed, to be intensified during the entire war period.

(b) *The ineffectiveness of percentage depletion as a stimulus to the prospector.*—Even if percentage depletion contributed to the stimulation of exploration and discovery—and we do not agree that it does—it would be an extremely wasteful and costly method. It would have been cheaper for the Government to have paid the entire cost of drilling all the dry holes classified as wildcat wells in 1941. The estimated cost of drilling these holes was about $50,000,000,[8] the estimated loss in revenue from percentage depletion attributable to oil and gas wells was more than $65,000,000. The reason why percentage depletion is so ineffective a stimulus is that a large part of the benefit accrues not to prospectors but to operators and royalty owners.

(i) *The operator.*—Twenty major integrated companies have been reported to account for about 53 percent of the total crude petroleum production of the United States. While data for these 20 companies are not available, it was estimated that the major companies in 1941 accounted for only 25 percent of the wildcat wells drilled and 36 percent of the footage drilled.[9] Their share in the direct benefits of percentage depletion is much larger than their share in the prospecting for new oil, since they frequently purchase properties with potentialities which have been established by the activities of independent prospectors.

(ii) *The royalty owner.*—Royalty owners who bear little or none of the cost of prospecting obtain disproportionate benefits from percentage depletion. They have little or no investment to charge against

[8] At the hearings on the Cole bill reported in Oil Weekly for March 2, 1942, p. 14, it was estimated that in 1941, 3,113 wildcat wells were drilled, of which 486 were successful and 2,627 were dry holes. At an average drilling cost of $17,300 per hole (reported for 1935 in Petroleum and Natural Gas Production, National Research Project, Works Progress Administration, p. 203) these dry holes involved an expenditure of $45,447,000. At an average cost per hole of $20,000 (an outside figure allowing for possible increase in cost) the 2,627 dry holes in 1941 represented a total drilling cost of $52,540,000.

[9] Hearings on the Cole bill reported in Oil Weekly for March 2, 1942.

income which makes the percentage depletion allowance particularly valuable to them. The benefits of percentage depletion to royalty owners are confined largely to taxpayers having ownership prior to the discovery of oil. Purchasers of royalty interests in developed properties ordinarily pay a sufficiently high price to entitle them to larger depletion allowances under cost depletion than under percentage depletion.

(c) *Other provisions favoring the prospector.*—There are several statutory provisions designed to provide relief to the prospector. The Mineral Lands Leasing Act of 1920 provides that successful completion of a well on the public lands entitles the prospector to a lease at a royalty rate of 5 percent—less than half the customary commercial royalty of 12½ percent. Section 105 of the Internal Revenue Code limits the surtax imposed by section 12 to 30 percent of the selling price in the case of an oil or gas property, the principal value of which has been demonstrated by discovery work done by the taxpayer. Finally, section 721 of the Code provides for relief under the excess-profits tax in the case of abnormal income resulting from exploration, discovery, and prospecting.

2. *The mining industry.*—The unimportance of percentage depletion in stimulating discovery and exploration is even clearer with respect to the mining industry than in the case of the oil industry. The development of mining properties in the field of the basic metals has passed beyond the stage of prospecting risk and adventure, and has settled down to a predictable, scientific, and commercial business enterprise involving the use of low-grade ores.

Except for the metals that have more recently become of commercial importance, domestic deposits of high-grade ores were fully explored many years ago. Growing demand and technological development, further stimulated by the war emergency, have led to more extensive exploration of low-grade ores. This cannot be termed "discovery", since the deposits for the most part have been known to exist. A recent proposal by the Secretary of the Interior calls for a program of extensive exploration of additional low-grade ores—to be carried out at Government expense.[10] Moreover, most mineral deposits—including metals of more recent commercial importance—are not developed by original prospectors; their development requires large amounts of capital and is of necessity undertaken by established enterprises.

D. *Percentage depletion cannot be justified by any special risks in the oil industry.*—The hazardous character of the oil industry has been cited as a reason for retaining the specially favorable tax treatment accorded the industry through percentage depletion. The possibility that percentage depletion may permit the recovery of considerably more than the actual cost of exploration and development of a productive well has been said to be justifiable on the ground that the excess is needed to compensate for the cost incurred in connection with wells that never become productive.

The answer is that percentage depletion is largely ineffective in accomplishing the desired objective and that the law contains other provisions for the offsetting of losses against gains. Further, the past two decades have seen changes in the organization of the oil industry that have made it better able to bear the risks of prospecting. Larger companies have become more important and have shouldered a larger part of the costs of prospecting.

[10] Department of the Interior press release February 16, 1942.

(a) *Provisions for the offsetting of losses against profits.*—Percentage depletion is of no help to the operator who loses his capital in repeated unsuccessful ventures, since he gets the benefit of percentage depletion only if he develops property that yields a net income. On the other hand, the operator who engages in both successful and unsuccessful ventures is permitted, both under the present law and the Treasury's proposals, to offset the cost of dry holes and unproductive leases against current income from productive property; he may also carry forward operating losses for 2 years. Consequently, even without percentage depletion, provision is made for the offsetting of losses on unsuccessful ventures against gains in successful ventures. No satisfactory reason has been offered why one operator should be permitted to recover more than his capital investment because another has lost his capital.

(b) *Changes in the structure of the industry.*—During the 20 years of discovery and percentage depletion the structure of the oil industry has changed substantially. The industry is now in a much better position to offset losses against income from successful wells, and thus to distribute the prospecting risk. Domestic production of crude petroleum in 1941 was about four times as great as in 1918. The estimated investment in crude petroleum production of $5,700,000,000 in 1935, together with investment in transportation, refining, and marketing, makes the combined petroleum industry the fourth largest in the country in terms of investment (exhibit 8). The gross investment in petroleum properties, plant, and equipment more than doubled from 1921 to 1938, increasing from $6,500,000,000 to $14,800,000,000 (exhibit 9).

This increase in the size of the industry has been accompanied by the integration of production with transportation, refining, and marketing with the result that the risks of prospecting are actually distributed over a very large aggregation of capital. Twenty major integrated companies have been reported to account for about 53 percent of the crude petroleum production of the United States, 72 percent of the mileage of crude-oil pipe lines, 87 percent of the tonnage of oil tankers, 76 percent of the crude-oil refining capacity, and 80 percent of the gasoline sales of the entire petroleum industry in the United States (exhibit 10). This integration is the development of recent years. Six important refining and marketing organizations that owned no important producing properties in 1918 now account for 38 percent of the crude petroleum production of the 20 major companies and 16 percent of the national total (exhibit 11).

Although these large producers account for a smaller share of prospecting and exploration than of production, they now bear more of the cost of exploration, either directly or indirectly, then they did when discovery depletion was first enacted. The use of so-called scientific methods for locating oil deposits, deeper well drilling, and other factors increasing capital requirements have tended to favor the large operator. Large producers also make what are termed "dry-hole contributions" to independent wildcatters and purchase leases in prospect areas from the wildcatters.

(c) *Loans to finance drilling.*—Concern has been expressed that the elimination of percentage depletion would make it difficult to borrow money to finance drilling for oil. The testimony presented to this committee has indicated that bank loans are commonly made only on the basis of productive properties. The servicing of such loans depends on the ability of the operator to recover his capital investment and to earn a sufficient margin over his operating costs to pay interest on the loan. The Treasury proposal would in no way interfere with the recovery of the capital investment since depreciation and depletion allowances would be permitted equal to the amount invested. Moreover, the interest paid on the loan is an allowable deduction from gross income in computing taxable income. Consequently, percentage depletion does not benefit the taxpayer unless his income exceeds the amount needed to repay capital cost and to pay interest on outstanding loans, i. e., unless he is a good credit risk without the benefit of percentage depletion.

E. *The elimination of percentage depletion will simplify the computation of the tax.*—Percentage depletion is not a simple method of computing the depletion allowance. Under existing law percentage depletion is computed separately for each property. This involves serious difficulty, first, in determining the price of the product at the property, and, second, in allocating expenses. The extensive litigation [11] that has resulted from the necessity of computing percentage depletion for each property separately is sufficient evidence of its complexity. Moreover, the provision for percentage depletion has not obviated the necessity of computing depletion based on cost. Since taxpayers have the option of using the one or the other basis, they generally compute cost depletion in order to protect themselves. Further, in their reports to stockholders, corporations ordinarily use cost depletion rather than percentage depletion.

F. *Percentage depletion is not justified as an offset to the heavy burdens of other taxes.*—It is claimed that special relief from the income tax in the form of percentage depletion is justified because the oil industry now bears a heavy tax burden in the form of gasoline taxes, property taxes, and State production or severance taxes. This claim cannot be accepted. Neither the property nor the production taxes are restricted to the oil industry alone. They affect other industries as well and justify no special relief for this particular industry. While the gasoline taxes are peculiar to the oil industry, they are borne in large part by the consumer rather than the producer.

II. ELIMINATION OF THE INTANGIBLE DEVELOPMENT EXPENSE OPTION

The regulations now give taxpayers the option of expensing intangible development costs of oil and gas properties. They also permit the expensing of the development costs of mines except the excess of costs over receipts for mines that have not yet reached the state of

[11] *Palmer v. Bender*, 287 U. S. 551; *Twin Bell Oil Syndicate*, 293 U. S. 312; *Vinton Petroleum Company of Texas*, certiorari denied, 293 U. S. 601; *Consumers Natural Gas Co.*, certiorari denied, 296 U. S. 634; *J. J. Perkins*, 302 U. S. 655; *Mountain Producers Corporation*, 302 U. S. 681; *Rawlins Oil Co.*, 303 U. S. 362; *Thomas A. O'Donnell*, 303 U. S. 370; *Wilshire Oil Co.*, 308 U. S. 90; *J. Steve Anderson*, 60 S. Ct. 952; *Kiba Oil Land Development Co.*, 58 S. Ct. 621; *Atlas Milling Co.*, 29 Fed Supp. 942; *Rocky Mountain Oil Co.*, 36 B. T. A. 369; *Montreal Mining Co.*, 41 B. T. A. 390; *Mirabel Quicksilver Co.*, 41 B. T. A. 101; *Sheridan-Wyoming Coal Co.*, U. S. Court of Appeals for the district of Columbia, 7708, decided December 31, 1941.

production. This excess must be charged to capital account to be recovered through depletion. It is recommended by the Treasury that the expensing of development costs be eliminated and that all development costs of productive properties be capitalized. Companies that elect to expense intangible development costs for tax purposes frequently capitalize intangible development costs in their reports to stockholders. Intangible development costs are a proper capital asset for purposes of reports to stockholders; they are likewise a proper capital asset for tax purposes.

It is estimated at levels of business for the calendar year 1942 and at the proposed tax rates that the elimination of the expensing of development costs alone, without the elimination of percentage depletion, would increase the revenue by $84,000,000.[12] The combined effect of eliminating percentage depletion and the expensing of development costs would be to increase the revenue by $206,000,000.[12]

Under the existing law, a taxpayer who uses percentage depletion and who is not subject to the net income limitation gets the same depletion allowance, whether he capitalizes his development expenses or deducts them currently as expense. Expensing his development costs gives him an additional deduction; capitalizing them does not. The expensing of development cost is, therefore, equivalent to allowing a double deduction, once when the costs are incurred, and once through percentage depletion. (For illustration of excessive allowances, see exhibit 3.)

If percentage depletion were eliminated and cost depletion substituted, the option of expensing development costs would not involve a double deduction. In that case, if development costs were capitalized, they would be included in the base to be depleted and would be recovered through depletion allowances; if the costs were expensed, the base to be depleted would be smaller and hence the depletion allowance less.

Expensing of development costs should be eliminated, however, regardless of the action taken with respect to percentage depletion. This privilege is not permitted to other groups for comparable capital outlays. The drilling cost of a productive well, for example, is a capital investment in the same way as the cost of a building or of equipment to a small retailer or manufacturer. There seems no more justification for allowing the capital investment in the well to be deducted from current gross income than for allowing the retailer or manufacturer to deduct his capital investment from his gross income at the time when the investment is made.

The original option for oil and gas wells dates back to 1917. The regulations contemplated development work done directly by an operator; they are written in terms of expenditures by an operator on wages, fuel, and other items. The trend in the industry since the adoption of the regulations has been toward drilling by independent contractors. The decisions of the Board of Tax Appeals [13] suggest that under the regulations operators may no longer be entitled to expense development costs where the operator does not drill the well himself, but pays a fixed price under a contract. The Treasury is

[12] At existing rates the estimates are $63,000,000 and $185,000,000, respectively.

[13] Bering Drilling Co., 42 B. T. A. 1057, and W. D. Ambrose, 42 B. T. A. 1405 (pending C. C. A. 5).

reluctant to continue the option in force in view of these administrative and legal problems.

It may be suggested that the expensing of development costs could be disallowed merely by changing the regulations. It might be claimed, however, that the interpretation given by the regulations has become imbedded in the statute, since it is of long standing and has been retained unchanged in the regulations concomitant with several reenactments of the basic legislation.[14] To avoid controversy, it would be best to eliminate the expensing of development costs by statute rather than by amending the regulations.

The elimination of the option to expense intangible development costs has been objected to on the grounds that taxpayers would have difficulty in segregating such expenses from others. The experience of the Bureau of Internal Revenue does not support this claim. Statements have been made by the Independent Drillers Association that more than 80 percent of all oil wells are drilled by members of their association. Most of these are drilled at a fixed price under a contract that differentiates intangible costs from others.

III. POSSIBLE ALTERNATIVES TO THE ELIMINATION OF PERCENTAGE DEPLETION

The Treasury is firmly convinced that percentage depletion should be completely eliminated. However, in case your committee prefers partial retention and modification of percentage depletion to its elimination, I should like to make some suggestions along that line.

A. *Continuance of percentage depletion for stripper wells and marginal mines only.*—If your committee desires to continue percentage depletion for stripper wells and marginal mines, this might be accomplished by the following:

(*a*) *Oil and gas properties.*—Permit percentage depletion at the rate of 25 percent of net income from the property for taxpayers who operate oil or gas wells on which the unrestricted production is not more than $1\frac{1}{4}$ barrels per well per day and on which the net income from the property—computed without allowance for depletion—is not more than 10 percent of the gross income from the property. This allowance shall be restricted to taxpayers who bear the actual burden of the cost of operating the property.

(*b*) *Mines.*—Permit percentage depletion at the rate of 25 percent of net income from the property, for taxpayers who operate mines on which the net income from the property—computed without allowance for depletion—is not more than 10 percent of the gross income from such property. This allowance shall be restricted to taxpayers who bear the actual burden of the cost of operating the property.

B. *Treatment of new discoveries.*—1. *Proposal.*—If your committee should desire to continue percentage depletion not only for stripper wells and marginal mines but also for new discoveries, this might be accomplished by the following provisions for properties becoming productive after December 31, 1941.

(*a*) *Oil and gas properties.*—On future discoveries of new pools, allow depletion not to exceed $27\frac{1}{2}$ percent—or a lesser percentage—of gross income to taxpayers contributing the equivalent of 25 cents or more per foot of hole drilled for wells less than 6,000 feet in depth and 50 cents per foot of hole drilled for wells in excess of such depth.

(*b*) *Metal mines.*—On metal mines hereafter discovered, allow 10 percent of gross income for taxpayers who bear the burden of the cost of exploration, development, and operation of the property.

(*c*) *Nonmetal and coal mines.*—For nonmetal mines, including coal mines, hereafter discovered, allow 5 percent of gross income for taxpayers who bear the burden of cost of exploration, development, and operation of the property.

If these allowances were made, the present limitation of percentage depletion to 50 percent of the net income of the property—computed before deduction of depletion—should be retained.

2. *Reasons for the proposal.*—Tax incentives for stimulating desirable industrial developments can be justified only if they are effective in terms of their cost to the public. Accordingly, if it is desired to continue tax incentives to encourage discoveries in mining properties, such incentives should be denied properties that will be developed in the ordinary course of extending the recovery of known commercially profitable mineral deposits.

It is suggested that for oil and gas wells this can be done by defining a discovery as a pool outside of the limits of a previously discovered and proven oil or gas pool. It is suggested further that the benefits of discovery allowances be limited to those contributing substantially toward the cost of the exploration of a new pool. Persons who, through fortuitous circumstances, find themselves the beneficiaries of mineral deposits discovered by others, have made no economic contribution. For this reason it is proposed that a minimum financial contribution be required varying with the depth of the well.

It is suggested that for mines the definition of discovery used in the present regulations[15] be adopted. The benefits might be limited to taxpayers who bear the cost of exploration, development, and operation of the property.

C. *Special treatment of existing properties.*—1. *Proposal.*—If, further, your committee desires to accord special treatment to all taxpayers who developed properties prior to January 1, 1942, this could be accomplished by the following proposal:

(*a*) *Oil and gas properties.*—Permit percentage depletion at the rate of 15 percent of gross income for taxpayers who elected to charge intangible drilling and development costs to capital account in prior years, and at the rate of 5 percent of gross income for taxpayers who elected to charge such costs to expense.

(*b*) *Metal mines.*—Permit percentage depletion at the rate of 10 percent of gross income for metal mines of taxpayers who capitalized intangible development costs in prior years, and at the rate of 5 percent for taxpayers who charged such costs to expense.

(*c*) *Nonmetal mines, including coal mines.*—Permit percentage depletion at the rate of 5 percent of gross income for nonmetal mines of taxpayers who capitalized intangible development costs in prior years, and at the rate of $2\frac{1}{2}$ percent for taxpayers who charged such costs to expense.

If these allowances were made, the present limitation of percentage depletion to 50 percent of the net income of the property (computed before deduction of depletion) should be reduced to 25 percent.

[14] Griswold, A Summary of the Regulations Problem, 54 Harvard Law Review 398, 1941.

[15] Regulations 103, sec. 19.23 (m) 3.

[illegible]—42—pt. 20——2

Moreover, if percentage depletion were continued for mines, it should not be required that taxpayers make a binding election in order to secure the percentage depletion allowance.

2. *Reasons for proposal*—(*a*) *The reduced rates.*—The available evidence suggests that the present rates applicable to gross income in computing percentage depletion are much more generous than is justified in view of the costs of acquiring properties and of developing them. As shown in exhibit 12 for 1934 the United States Department of the Interior reported that cost depletion amounted to about 7½ percent of the average selling price, and intangible development costs, on a capitalized basis, amounted to about 6 percent.

The increase in tax rates since these percentage provisions were enacted make them far more generous now than they were when enacted. For example, the 1936 normal tax on corporations reached a maximum rate of 15 percent. Under this rate there was a tax saving of 4.1 cents attributable to the 27½-cent depletion allowance permitted from each dollar of gross income.[14] If the taxpayer's net income was 75 percent of his gross income, the tax saving amounted to 5⅓ percent of net income. Under the proposed tax rates and with only a 5-percent depletion allowance, the corresponding tax saving would be 5.9 percent of net income if the taxpayer were in the highest excess-profits-tax bracket. In general, the possible tax saving under the proposed tax rates and the proposed percentage depletion allowances exceeds the tax saving under the 1936 rates and percentage depletion allowances.

(*b*) *The differential rates.*—The proposed lower percentage allowance for taxpayers who expensed development costs is intended to compensate for the advantage they gained by exercising the option of expensing such costs. Taxpayers who expensed development costs have no capitalized amount to be depleted, whereas taxpayers who capitalized such costs have such an unrecovered capital.

For oil and gas mines, the suggested differential is 10 percent. The size of the suggested differential is based on preliminary data supplied by the Tariff Commission from its current survey on the costs of producing crude petroleum. According to this survey, the annual deductions under the method of capitalizing costs currently average about 10 percent of gross income.

(*c*) *Reduction in the net income limitation.*—At present, percentage depletion allowances are limited to 50 percent of net income. If percentage depletion were to be continued on existing properties and the rates suggested above were to be substituted for the present provision, this limitation should be reduced to 25 percent. Unless this is done, a considerable part of the effect of reducing the gross income percentages would be lost, since for many taxpayers the net income percentage rather than the gross income percentage is the effective limit to the amount of depletion they can deduct.

IV. CONCLUSION

The Treasury has made many studies of percentage depletion and related allowances in the past several years. It has given careful

[14] Since there was an undistributed-profits tax in 1936, this estimate assumes that all income was paid out.

consideration to the objections repeatedly advanced against the elimination of these special allowances. These objections have been reexamined in the light of the special needs for the war program. It is found that the elimination of percentage depletion and the expensing of development costs will not interfere with the war effort, will yield about $206,000,000 of much needed revenue, and will remove from the statute a long-standing and inequitable privilege. Thus, it will contribute substantially to the war effort in terms of national morale.

(The chart and exhibits submitted by Mr. Paul are as follows:)

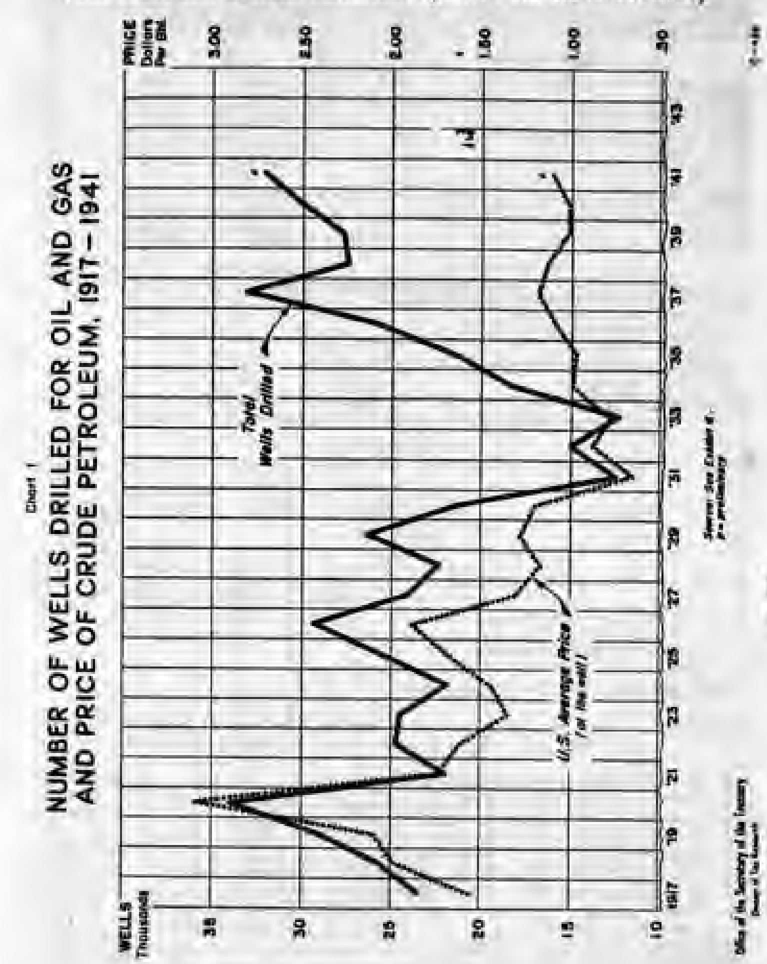


EXHIBIT 1.—*Net income and provisions for Federal income taxes of selected oil companies for 1941, with provision for Federal income taxes less than 31 percent of net income, as reported in Moody's Industrials Supplement*

Company	Net income before Federal taxes	Provision for Federal income taxes[1]	Taxes a percent of net income
Major companies			*Percent*
Phillips Petroleum Co	$23,515,535	$6,073,858	25.8
Skelly Oil Co	7,579,530	1,705,000	23.0
Texas Corporation	67,704,691	15,830,000	23.4
Union Oil Co. of California	7,700,732	1,461,500	19.0
Minor companies			
Bishop Oil Co	56,552	1,400	2.5
Devonian Oil Co	710,907	[3] 16,574	2.3
Houston Oil Co. of Texas	1,235,400	24,303	2.0
Kirby Petroleum Co	186,030	[3] 18,609	10.0
North American Oil Consolidated	207,101	[3] 37,000	17.9
Plymouth Oil Co	1,724,309	63,350	3.7
Republic Natural Gas Co.[3]	745,759	[3] 86,600	11.5
Republic Petroleum	122,695	[4] 15,619	12.7
Superior Oil Co	184,503	[4] 18,100	19.9
Texas Gulf Producing Co	340,994	[4] 24,204	7.1
Universal Consolidated Oil Co	350,123	41,290	11.8
Wellington Oil Co	208,304	15,948	7.6
Wilcox Oil and Gas Co	340,234	[4] 9,500	2.7

[1] For Phillips Petroleum Co., includes $305,103 for excess-profits taxes; no other company in this table reported separately reserves for excess-profits taxes.
[2] May include State income taxes.
[3] Fiscal year ending June 30, 1941.
[4] Reserve established for Federal taxes, shown in reported balance sheet.

Source: Moody's Industrials Supplement through Mar. 28, 1942.

EXHIBIT 2.—*Net income of selected oil companies reported for income tax purposes compared with net income on the basis of cost depletion*

[In thousands of dollars]

Company	Year	Depletion claimed for income tax purposes[1]	Cost depletion	Taxable net income reported[2]	Net income based on cost depletion[2]
A	1937	9,800	600	−1,000	4,200
B	1937	10,100	2,900	−5,900	1,300
C	1937	3,600	400	800	4,000
D	1938	5,300	1,900	6	3,400

[1] Under percentage depletion privileges.
[2] After deduction of 85 percent of dividends received.

Source: Form 1120, corporation income tax return.

EXHIBIT 3.—*Percentage depletion and intangible development costs of a leading oil company for 10 oil properties in the East Texas field*

1. Cost of properties (including additions to cost)	$3,001,318
2. Depletion sustained on cost	$701,604
3. Depletion allowed under existing law	$3,635,544
4. Ratio of depletion allowed to cost of properties ... percent	121.1
5. Intangible development costs expensed	$3,083,271
6. Total deductions for depletion and intangible development costs	$6,718,815
7. Cost of properties plus intangible development costs	$6,084,589
8. Ratio of total deductions to cost of properties plus intangible development costs ... percent	110.4
9. Original oil reserves (barrels)	$64,408,000
10. Remaining oil reserves (barrels)	$48,704,533
11. Percent of original reserves remaining ... percent	75.6

Source: Schedules filed with income-tax returns, 1931–37.

EXHIBIT 4.—*United States petroleum production, consumption, imports, exports, and estimated reserves, 1926–41*

[Millions of barrels]

Year	Production of crude oil	Domestic consumption			Imports of crude oil	Exports of crude oil	Estimated reserves of crude oil[1]
		All oils	Gasoline	Fuel oil			
1926	771	780	267	340	62	15	(2)
1927	901	808	305	332	59	16	(2)
1928	901	861	339	384	80	19	(2)
1929	1,007	940	383	415	79	26	(2)
1930	898	937	398	369	62	24	(2)
1931	851	903	408	335	47	25	(2)
1932	785	833	379	306	45	27	(2)
1933	906	868	390	324	32	37	(2)
1934	908	920	410	340	36	41	12,177
1935	997	984	435	367	33	51	(2)
1936	1,100	1,093	482	411	32	51	13,063
1937	1,279	1,170	519	442	27	67	15,507
1938	1,214	1,137	523	409	26	77	17,348
1939	1,265	1,251	550	458	33	72	18,483
1940	1,353	1,323	580	500	43	52	19,025
1941[3]	1,392	1,459	640	(4)	(4)	(4)	20,300

[1] End of year figures, estimated by American Petroleum Institute. Includes only reserves in known and proved fields, and recoverable by production methods then known.
[2] No comparable estimate available.
[3] Estimated by Oil and Gas Journal, Jan. 29, 1942.
[4] Data not made public.

Source: Petroleum Facts and Figures.

EXHIBIT 5.—*Production of crude oil in Pennsylvania and New York and average price, 1911–29*

Year	Production (in thousands of barrels)	Average price Pennsylvania crude (per barrel)	Year	Production (in thousands of barrels)	Average price Pennsylvania crude (per barrel)
1911	9,201	$1.32	1921	8,406	$3.33
1912	8,712	1.64	1922	8,425	3.21
1913	8,865	2.49	1923	8,659	3.33
1914	9,109	1.91	1924	8,926	3.61
1915	8,720	1.60	1925	9,732	3.63
1916	8,467	2.52	1926	10,917	3.50
1917	8,613	3.25	1927	11,768	3.66
1918	8,217	4.00	1928	12,559	3.27
1919	8,989	4.16	1929	15,197	2.79
1920	8,344	5.97			

Source: Bureau of Mines, Minerals Yearbook, 1911–29.

EXHIBIT 6.—*Total number of wells drilled for oil and gas and United States average price of crude petroleum at the wells, 1917–41*

Year	Total wells drilled	United States average price of crude petroleum per barrel	Year	Total wells drilled	United States average price of crude petroleum per barrel
1917	23,407	$1.56	1930	21,240	$1.19
1918	25,687	1.98	1931	12,432	.65
1919	30,173	2.10	1932	15,040	.87
1920	33,911	3.08	1933	12,312	.67
1921	21,037	1.73	1934	18,197	1.00
1922	24,689	1.61	1935	21,420	.97
1923	24,438	1.34	1936	25,890	1.09
1924	21,588	1.43	1937	33,078	1.18
1925	25,623	1.68	1938	27,493	1.13
1926	29,219	1.88	1939	27,717	1.02
1927	24,143	1.30	1940	30,040	1.02
1928	22,331	1.17	1941	32,140	[1] 1.10
1929	26,356	1.27			

[1] Preliminary.

Source: For 1917–39, Petroleum Facts and Figures (1941), pp. 79 and 82; (1937) pp. 79 and 92. For 1940 and 1941, data on number of wells from Oil and Gas Journal, Jan. 29, 1942, data on average price from the Bureau of Mines.

EXHIBIT 7.—*Number of oil fields discovered with more than 1,000,000 barrels of ultimate production, and ultimate production by method of discovery, 1922–38*

Year	Number of oil fields				Ultimate production (millions of barrels)				
	Geological	Geophysical	Random drilling	Total	Geological	Geophysical	Total geological and geophysical	Random drilling	Total
1922	14		8	22	343		343	501	844
1923	13		8	21	532		532	148	680
1924	26		1	27	550		550	17	567
1925	19	1	2	22	544	5	549	7	556
1926	27	2	4	33	1,706	5	1,711	243	1,954
1927	23	3	3	29	644	208	852	22	874
1928	34	1	2	37	2,348	90	2,438	7	2,445
1929	24	10	3	37	847	83	930	83	1,013
1930	18	4	1	23	166	44	210	[1] 3,430	3,640
1931	9	8	3	20	55	363	418	747	1,165
1932	10	4	1	15	152	13	164	34	199
1933	14	7		21	180	87	267		267
1934	26	18	1	45	385	620	1,005	1	1,009
1935	58	30	4	92	635	680	1,315	30	1,345
1936	56	38	3	97	424	372	796	8	804
1937	63	44	4	111	331	754	1,085	11	1,096
1938	78	64	2	144	281	524	805	7	812
Total, 1922–38	512	234	50	796	10,138	3,854	13,992	5,297	19,288

[1] Includes East Texas discovery.

Source: Petroleum and Natural Gas Production, National Research project, Works Progress Administration, July 1939, pp. 336–7.
NOTE.—Due to rounding, the sum of the individual items will not add to totals in all cases.

EXHIBIT 8.—*Gross investment in the American petroleum industry, by divisions of the industry, 1935*

Division	Gross investment (in millions of dollars)	Percent of total	Division	Gross investment (in millions of dollars)	Percent of total
Producing	5,665	42.7	Marketing	1,814	13.7
Natural gasoline	270	2.0	Total	13,276	100.0
Transportation	2,127	16.0			
Refining	3,400	25.6			

Source: Temporary National Economic Committee hearings, pt. 14A, p. 7701.

EXHIBIT 9.—*Gross investment in properties, plant, and equipment of the American petroleum industry, 1921–38*

	Gross investment		Gross investment
1921	$6,550,000,000	1930	12,000,000,000
1922	7,677,000,000	1931	12,100,000,000
1923	8,000,000,000	1932	12,200,000,000
1924	9,161,000,000	1933	12,300,000,000
1925	9,500,000,000	1934	12,700,000,000
1926	10,000,000,000	1935	13,276,000,000
1927	10,500,000,000	1936	13,775,000,000
1928	11,000,000,000	1937	14,525,000,000
1929	11,500,000,000	1938	14,750,000,000

Source: Temporary National Economic Committee Hearings, pt. 14A, p. 7700.

EXHIBIT 10.—*Relative importance of 20 major oil companies in the petroleum industry of the United States*

	Year or date	All companies	Twenty major oil companies	Ratio of 20 major oil companies to all companies
				Percent
Domestic production of crude petroleum (in thousands of barrels)	1937	1,279,160	671,993	52.5
Mileage of crude oil pipe lines:				
Trunk line	June 30, 1936	57,820	49,371	85.4
Gathering line	do	52,760	30,284	57.4
Total		110,580	79,655	72.0
Oil tankers:				
Number	Sept. 30, 1938	396	333	84.1
Deadweight tonnage	do	4,168,450	3,634,650	87.2
Daily crude oil refining capacity (in thousand barrels of crude oil input)	Jan. 1, 1938	4,331.2	3,291.5	75.6
Sales of gasoline (in thousand barrels)	1938	[1] 509,665	[2] 407,659	80.0

[1] Total United States gasoline consumption.
[2] Includes only 18 companies.

Source: Temporary National Economic Committee Hearings, Petroleum Industry, pt. 14-A, pp. 7719, 7720, 7730, 7731, 7817.

EXHIBIT 11.—*Gross production in 1938 of major oil companies having no important producing properties in 1918* [1]

Name of company	1938 production (barrels)	Name of company	1938 production (barrels)
Atlantic Refining Co.	15,417,000	Total for 20 major companies	528,437,000
Continental Oil Co.	27,387,000	Total for 6 companies as a percent of total for 20 major companies	37.8
Socony Vacuum Oil Co.[2]	58,481,000	United States total	[3] 1,214,355
Standard Oil Co. (Ind.)	37,491,000	Total for 6 companies as a percent of total for United States	16.1
Standard Oil Co. (N. J.)	60,620,000		
Standard Oil Co. (Ohio)	361,000		
Total for 6 companies	199,617,000		

[1] Information as to crude production of companies in 1918 from description of company's operations in Moody's, 1919.
[2] Standard Oil of New York, a component of Socony Vacuum Oil Co., acquired important producing properties in 1918.
[3] Petroleum Facts and Figures, 1941, p. 64.

Source: Production data from Temporary National Economic Committee Hearings, pt. 14-A, p. 7779.

EXHIBIT 12.—*Depletion, intangible development cost, and average selling price of crude petroleum,*[1] *1931–34*

Year	Depletion	Intangible development cost [2]	Average selling price
1931	$0.084	$0.037	$0.643
1932	.081	.043	.853
1933	.073	.034	.678
1934	.074	.060	.984

[1] Average cost is based upon "company interest" oil, or approximately ⅞ of the total crude petroleum production.
[2] As reported by producers east of the Mississippi. For producers west of the Mississippi the reported costs were charged to capital and amortized.

Source: U. S. Department of Interior, Petroleum Administrative Board, report on the Cost of Producing Crude Petroleum, 1935.

Mr. PAUL. Mr. Chairman, I have a letter I would like to read into the record, addressed to the Secretary of the Treasury by the Secretary of the Interior. The purpose of this letter is to state clearly the position of the Interior Department with respect to this proposal of the Treasury.

The CHAIRMAN. You may proceed to read the letter.

Mr. PAUL (reading):

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF PETROLEUM COORDINATOR FOR NATIONAL DEFENSE,
Washington, April 15, 1942.

Hon. HENRY MORGENTHAU, Jr.,
Secretary of the Treasury.

MY DEAR MR. SECRETARY: It has been suggested to me that certain portions of the testimony before the Ways and Means Committee given by Mr. Robert E. Allen may possibly be interpreted as implying that the Office of Petroleum Coordinator for National Defense is opposed to any modification of the present 27½ percent depletion allowance as applied to the production of oil and gas.

While I believe Mr. Allen made it quite clear that my office has taken no position with respect to this matter, I wish you to understand that this office has no opinion to express either for or against a modification of the existing depletion allowance. Any change in the national tax structure as applied to any particular industry must necessarily have some economic effect upon the operations of that industry. Obviously, however, that effect in any particular instance must be weighed against the effect of other changes for other industries. It involves a balancing of the economic effects of the many different methods of raising revenue which are before you as well as a judgment of the equities of the whole tax structure as between many classes of taxpayers.

It is for these reasons that my office prefers not to render more difficult your task of weighing these troublesome questions of national fiscal policy by placing itself in the position of either advocating or not advocating one method of raising necessary revenues as against a multitude of other methods which may be pursued. For me to take other than a neutral position would require a detailed study of the many tax suggestions which your Department has submitted to the Ways and Means Committee. Neither I nor my office has made such a study.

Sincerely yours,

(Signed) HAROLD L. ICKES,
Petroleum Coordinator for National Defense.

Mr. DISNEY. Mr. Chairman, may I make this observation with respect to Mr. Ickes' letter? Of course, Mr. Allen made it just as plain as the lights shining here that he was simply here to give the committee whatever facts it might inquire for; and it was never an attempt to commit the Interior Department. So Mr. Ickes, letter simply is another page in the hearing. Mr. Allen's testimony was never asked for as anything except factual, and he specifically made no recommendation one way or the other.

Mr. Chairman, this makes several bites that we have had at this cherry; this is the first time that the Treasury has really played all its cards. I ask unanimous consent that later in the hearing I have leave to file a statement or to produce a witness on this subject.

Mr. REED. I should like to join in that unanimous-consent request, Mr. Chairman.

The CHAIRMAN. Without objection, the unanimous-consent request of Mr. Disney and Mr. Reed will be agreed to.

Mr. DISNEY. Mr. Paul, I am glad to note the appearance here of that famous oil man, Mr. Tarleau, of the Treasury Department, as your assistant. He has had a lot of experience on Manhattan Island in the oil business and his testimony ought to be worth more than that of the oil people.

Still in a light vein, although seriously, this is the first time the committee has had the information that $200,000,000 was involved. The Secretary of the Treasury came down and gently hinted at $80,000,000, and we proceeded on that theory.

I just wonder if Mr. Paul has a new pencil or some new figures, or has sharpened his pencil.

Now, Mr. Chairman, I am going to be pretty tedious in this cross-examination, because in the long run we can save time by getting as many of these questions asked and answers returned as possible; that is, it will save time in executive session, in my judgment. So I hope the committee will not be impatient with me, in my awkward way of presenting the questions I am going to ask. It will take considerable time.

I do not want to delay the committee. I assure you I am just as sick and tired of these hearings as any other member of the committee. But this is the first shot we have really had at this matter.

Mr. KNUTSON. May I suggest that we have it go over until some other day, if that is the case?

Mr. REED. Mr. Chairman, I shall probably want to ask a series of questions myself on this matter, and I think we should have an opportunity to study the statement that the Treasury has made. The Treasury has been coming in here, in a sort of merry-go-round fashion, presenting these things, as Mr. Disney has indicated, a piece at a time. This is an important subject, and I think it would be well for us to have an opportunity to examine Mr. Paul's statement, as presented this morning, to formulate our questions in an orderly way.

The CHAIRMAN. The Chair would like to inquire if it is agreeable to have Mr. Paul come back, perhaps at the foot of the calendar this afternoon.

Mr. DISNEY. Let me suggest that Mr. Paul, in the interest of saving his own time, be recalled tomorrow morning.

Mr. REED. Mr. Chairman, if we were to recall Mr. Paul this afternoon, we could not pay attention to the other witnesses on the calendar and study this oil question, too.

The CHAIRMAN. Would it be agreeable to you to come back tomorrow morning, Mr. Paul?

Mr. PAUL. Entirely. That may fit in better because I see that you have a number of people on the calendar today. Also, I have a short statement on the matter of tax-exempt securities which I intended to make to the committee, but in view of your arrangement for 11 o'clock this morning, perhaps I cannot do that at this time.

Mr. DISNEY. I ask unanimous consent Mr. Paul return in the morning at 10 o'clock and be the first witness for inquiries.

The CHAIRMAN. Without objection, the unanimous-consent request is agreed to.

Mr. CROWTHER. Mr. Chairman, I do not want to be overcritical, but it seems to me that we have a different condition here than ever before. I do not remember, during hearings of this kind, that the Treasury made frequent entrances back into the hearings in what the lawyers call rebuttal. I do not remembere that. It may be I am wrong about it. However, if that procedure is extended to many of the other subjects that we have under discussion, and other interested witnesses were allowed to appear again, these hearings would be of interminable length, and we never would get through.

I just call attention to that fact, that this is rather a new procedure.

Mr. Disney. May I say that Mr. Robertson propounded a unanimous-consent request to bring Mr. Paul back. That is how that came about.

The Chairman. The Chair will observe that the Treasury is perhaps more vitally interested in this matter than any other department, and I am sure that in justice to the committee, all they want to do is to give what information they have for the benefit of the committee. Of course, if we were to recall any other witness who might want to appear again, these hearings would drag out into an interminable length, as the gentleman from New York says.

Mr. Crowther. What I had in mind was without any intent to criticize, but it seemed to me, in fairness, that some appointed representative of the industry who has appeared ought to have an opportunity, after studying this last statement of the Treasury, to say something about it. I had in mind Senator Gore, who made the opening statement on that subject, for the industry. I have no doubt that he would like, after a study of this statement, to make another statement to the committee. But I am afraid that if we adopted that policy generally we would be establishing a precedent that would cause a great deal of trouble for us and lengthen the hearings too much. But it does seem fair, after as exhaustive a study as has evidently been made of this proposition, that somebody on the other side should have an opportunity to say something about it.

The Chairman. The Chair feels that that point has been well taken care of in the unanimous-consent request made by Mr. Disney.

Mr. Crowther. I am perfectly satisfied to have Mr. Disney and Mr. Reed act as suggested.

Mr. Paul. Mr. Chairman, may I say that the last thing I want to do is to inflict myself on the committee.

The Chairman. The Chair will state with reference to this unusual procedure that has taken place, that on yesterday morning the Secretary of the Treasury communicated with the chairman of this committee, and said he would like to arrange for some representative of the General Motors Corporation to appear here this morning; that the Secretary himself was interested in the statement that would be made. Arrangements were made which the chairman hopes are agreeable to the membership of the committee, that Secretary Morgenthau would be here to introduce certain witnesses at 11 o'clock.

Without objection, we will hear the Secretary at this time.

STATEMENT OF HON. HENRY MORGENTHAU, JR., SECRETARY OF THE TREASURY

Secretary Morgenthau. Mr. Chairman, Senator George, and gentlemen of the Ways and Means Committee:

I appreciate very much this opportunity to come here and explain to you a part of the Treasury program now being carried on with the help of management and labor, to bring to the attention of the workers of this country our voluntary pay-roll-deduction plan. At present this plan has been adopted in some 54,000 plants in this country, employing about two-thirds of all the workers in industry, or about 20,000,000 people out of a total of 30,000,000. General Motors, in cooperation with the various members of employee unions, are to start this plan today, and I thought that you gentlemen would like to hear about it the way I heard about it. It was explained to the President and it was very pleasing to him.

With your permission, before the General Motors people are presented, there are two representatives here of the employees whom I would like to introduce. The first is Mr. Nixon, of the United Electrical Radio Workers.

The Chairman. We shall be glad to hear Mr. Nixon at this time.

STATEMENT OF RUSS NIXON, WASHINGTON REPRESENTATIVE, UNITED ELECTRICAL, RADIO, AND MACHINE WORKERS, C. I. O.

The Chairman. You may proceed, Mr. Nixon.

Mr. Nixon. I am the Washington representative of the United Electrical, Radio, and Machine Workers, a C. I. O. affiliated union. We represent some 400,000 workers in this industry engaged very largely in the production of war material. We represent the workers in the electrical divisions of the General Motors Corporation numbering approximately 25,000 men and women.

I am extremely happy to have the opportunity, on behalf of the union I represent, to come here at this time jointly with management to tell you just a word about the steps that have been taken in the development of a program, a joint management and labor program, for the increased purchase of bonds, for the purpose, of course, of increasing the sale, increasing the strength of our all-out war production program, to defeat the Fascist enemies of the American people.

This program has been developed through the joint collaboration of the unions and management in the various General Motors Corporation plants. It is the result of consultation and discussion between the representatives of the men and the management.

We are pleased to be able to come here on this matter with a complete unity, with a common objective of increasing the sale of these bonds.

On the part of the workers who are represented by my organization, I am happy to be able to say that without reservation we pledge every ounce of our energy to the successful carrying out of this program. We are talking about it in our union meetings. We are putting bulletins on the bulletin boards of the companies throughout the land. We are writing about it in our union publications. We have committees working on this problem. We are trying, wherever possible, to have a joint cooperative effort with management to make the sale of these bonds a great success.

We are doing this, gentlemen, as I am sure you realize, in consistent action with a program that my organization and I believe labor as an entirety has long followed, of giving its support and unreserved support to every element of public policy and public action which will culminate in an all-out war production to the defeat of the Fascist Axis.

I am happy to be able to be here and to express with Mr. Anderson, of the General Motors Corporation, and the other representatives of that company, the complete unity in this great effort in which we are engaged.

The Chairman. We thank you. Will you call your next witness, Mr. Secretary?

Secretary MORGENTHAU. Mr. Chairman, we have two representatives here of the employees; the next one is Mr. Walter Reuther, who represents some 200,000 employees of General Motors.

The CHAIRMAN. Mr. Reuther, please identify yourself for the benefit of the record.

STATEMENT OF WALTER REUTHER, DIRECTOR, GENERAL MOTORS DIVISION, UNITED AUTOMOBILE WORKERS, C. I. O.

Mr. REUTHER. Mr. Chairman and gentlemen, my name is Walter Reuther, director of the General Motors Division of the United Automobile Workers Union, C. I. O.

I represent about 200,000 General Motors workers in some ninety-odd plants throughout the country.

I want to say that we are in complete agreement with the plan that is going to be submitted here today, and feel that it represents the most effective way to mobilize the workers for full participation in the war effort for purchasing the greatest amount of Defense bonds.

The United Automobile Workers Union, which has some 650,000 members in the automobile and aircraft industries, at its convention last August, by unanimous vote of the convention, agreed to initiate a movement in our industry to have these voluntary pay-roll check-offs for the purchase of bonds.

When the Japs attacked Pearl Harbor our union pledged to buy $50,000,000 worth of bonds, and yesterday the president of our union, Mr. Thomas, announced that we had already purchased more than $50,000,000 of bonds and we have pledged to buy $50,000,000 more of bonds, as we put it, to replace the battleship *Arizona* that was lost, because some of our boys were on that ship.

Five other C. I. O. unions have subscribed and pledged to buy $111,000,000 worth of Defense bonds. One of our plants, having about 8,000 workers, agreed to buy $1,000,000 worth of bonds, and in 9 weeks' time the workers of that plant oversubscribed the $1,000,000.

We think this is the most effective way of approaching the problem, because it is the democratic way of mobilizing the workers on a voluntary basis.

We have not gone along with the recommendation of the Treasury Department for 10 percent. We have recommended 20 percent, and we are trying to get our people on a voluntary basis to subscribe 20 percent of their income for the purchase of Defense bonds. And in many plants we are meeting that mark.

I think that such plans as will be submitted by the General Motors Corporation, which represent joint management, Government, and labor campaigns, can fully mobilize the people in the shops; it can make them realize that this is a war where everything that they, as citizens of a free, democratic country, have, is at stake, and I believe they will do more on a voluntary basis, they will buy more bonds than they will on a compulsory basis.

Also, it will have its effect on production, because in these campaigns we use posters, and in departmental meetings, in shift meetings, in plant meetings, we get up competition between groups of workers in the shop, which will all bring about a lot of enthusiasm for the whole war effort. That enthusiasm will develop a very fine labor morale, and that labor morale will be reflected in increased war production.

On the other hand, if you have a compulsory-savings plan, which checks off the money from the worker's pay envelope, you do not get this enthusiasm that comes out of a voluntary campaign, and you will not build the kind of morale that this kind of campaign will build, when it is launched jointly by Government, management, and labor.

We feel that we can get more bonds purchased by our people; we can build up a greater interest and understanding of what this war effort means, the sacrifices it takes, the sweat it takes to win it—we can build up better morale and out of that will come a greater effort on the part of the individuals.

So we strongly urge—and I know I speak for all of the 200,000 workers in General Motors, and the other thousands of workers in our industry—this voluntary method on the basis of these plans, which will be submitted to you, as the real way to mobilize the American workers for full participation in the war, in terms of the war effort, in terms of production, in terms of buying greater amounts of Defense bonds.

I hope that your committee will go along with that suggestion, because it is the real democratic way; it is the basis on which we can mobilize our people.

The CHAIRMAN. We all realize, I suppose, that it is not only necessary but expedient that a portion of the war program be financed by the purchase of bonds. It could not reasonably be expected that it could all be financed through taxation, and that portion which cannot be financed through taxation must of necessity be financed by the sale of securities.

You think, after studying the matter thoroughly, that the voluntary plan, at least at this time, is much preferable, will work much better, would be accepted by the American people with a greater degree of satisfaction, than a compulsory plan? Is that your thought?

Mr. REUTHER. Our whole experience has been, if you go to the workers and explain why this money is needed, through such campaigns as are being proposed here, you can raise much more money on that basis than you can on a compulsory basis. That is why we were able to oversubscribe $50,000,000 in a very short time, and we are now working on the second $50,000,000. If that had been done on a compulsory basis, I do not think we could have gotten that much money in that short a time; plus the enthusiasm that we build up for the war effort.

Mr. COOPER. Mr. Chairman, I would like to inquire very briefly just for information.

I am favorably impressed with the statement that you make here. I have no doubt you have given it a great deal of study and thought. And I am favorably impressed with the results that you anticipate we will get from the organized workers of the country. I assume, of course, if the plan is applied for the organized workers of the country, it would have to be applied to everybody else in the country; is that true?

Mr. REUTHER. That is correct, the same principle.

Mr. COOPER. Could there be any difficulty anticipated in a situation of this kind? Let us take any small town, not having in mind organized workers for the moment, but just ordinary citizens of the country. Here is a man living in a certain house, in any small town, who for patriotic reasons buys all the bonds he can and makes a real sacrifice in buying them. Yet, you might find in the next block a man who is much better situated financially, and is in a position to buy many more bonds than the first man, but he does not follow the impulse of patriotism, as the first man did. He declines to buy any at all.

What do you think of a possible situation of that kind?

Mr. Reuther. I am not qualified to speak for the general public, but I know that the workers, if given the facts, if told what the war is all about, and what we have at stake, will respond on a voluntary basis. And I think the public at large will respond in a similar manner if they are made aware of what the facts are; if we carry the war to them, and make them understand what their stake is in this war. I think in that event the people at large will respond voluntarily.

Mr. Cooper. That is your thought on it.

Mr. Reuther. Yes.

Mr. Treadway. Would the witness kindly repeat the amounts that he read off so hastily, that the different unions have already subscribed?

Mr. Reuther. After Pearl Harbor, the United Automobile Workers, C. I. O., put this poster out, all over the union halls and throughout the plants where we have contracts, on which we stated that we pledged to replace the battleship *Arizona*, which was sunk at Pearl Harbor. And we pledged at that time—that is, our members—to buy $50,000,000 worth of bonds. We have already purchased $50,000,000 and we are now working on another $50,000,000 for a battleship in the Atlantic, since this is a two-ocean war. We want to buy a battleship for each ocean.

Mr. Treadway. How far has that progressed?

Mr. Reuther. We have just started on the second $50,000,000. As an illustration, I pointed out that in one plant, with 8,000 workers, when we made the pledge to raise $50,000,000, that plant of 8,000 workers said that they would volunteer to subscribe $1,000,000, and it took them 9 weeks to do it, on a voluntary basis.

We have set our sights—and that has been set by the international executive board, the highest governing body in our union—at 20 percent instead of 10 percent. We are shooting at that 20 percent mark.

In addition to what our union has done, the textile workers, the retail clerks union, the C. I. O. shipbuilders union, and the aluminum workers of America, C. I. O.—those four unions, plus ours, jointly agreed to buy $111,000,000 worth of bonds, not including our second $50,000,000, which would make $161,000,000 altogether. That is on a voluntary basis.

If we launch campaigns of the type being proposed here this morning, that have the support and cooperation of the Government, labor, and management, working as a team, in a common effort, we think that will generate tremendous enthusiasm, which will make it possible to buy even more than we have bought in the past.

Mr. Treadway. These pledges that you speak of would add up to $211,000,000; I think you said $161,000,000.

Mr. Reuther. That is right; $211,000,000 is correct.

Mr. Treadway. Thank you; that is all.

Mr. Crowther. Along this line, I am very much interested, as we all are, and impressed, with this statement of your combined effort. This may not be exactly in line with what we are discussing at the present moment, but do you not think that this question of hours, that has been made so much of before the country, is one on which we should come to an agreement voluntarily, between the members of the union, the Government and the employers? Do you not think that could be arranged? You are pretty well versed in this matter. You had a plan yourself here a year or more ago; perhaps if it had been adopted, it might have helped.

Mr. Reuther. I do not think there is a necessary relationship between the question of hours and the question of selling bonds.

Mr. Crowther. That is true.

Mr. Reuther. I think I can answer the question; at least I can give you my viewpoint on it. Certainly, at the present time, in the plants of General Motors—and I think Mr. Anderson, of the General Motors Corporation will be able to tell you—the workers are prepared and the company is prepared to operate those plants as many hours per day and as many days per week as necessary. The question of hours is not holding up one single job in the General Motors Corporation today. We have been able, through collective bargaining, around the conference table, in a democratic manner, to work out all the problems relative to the operation of these plants 7 days a week, 24 hours a day, where necessary.

Mr. Crowther. Thank you very much. I know there is a difference between the two subjects, but I wondered if something could not be done along that line on this question that has apparently been so troublesome.

Mr. Dingell. If I may interject a thought that undoubtedly has some bearing on what the committee will do: Obviously, we want to reach all of the workers and as many of the people as possible in this Treasury recommendation, and I have set out to ask what is your idea of a voluntary plan described here as having been initiated by your members, if it is to be adjusted to attain the Government's objective of keeping down inflation and winning the war, instead of a compulsory plan, as more effective and desirable. How are you going to reach a certain number of people who are not organized, as Mr. Cooper touched upon and, perhaps, a certain number of slackers? Undoubtedly, the country is going to insist that everybody buy bonds. Of course, you and your organization, I think, can handle that fractional problem quite easily, by the competition among the men. I think you can shame them into buying in the few instances where they may be disposed not to participate, but what about the others? What is your suggestion to the committee about handling that situation? I mean what methods would you use on the slacker dollar?

Secretary Morgenthau. Could I say something there?

Mr. Dingell. Of course.

Secretary Morgenthau. Mr. Dingell, if it is agreeable, after you gentlemen have heard General Motors explain the plan, if there are any questions you would like to ask from the Treasury, along the line you are asking, I think it is our responsibility and we are here and Mr. Gamble is here to answer any questions along the line you ask.

Mr. DINGELL. Of course, Mr. Secretary, I am concerned about what is labor's view, that is the reason I am asking Mr. Reuther what he thinks of trying to get at the slacker dollar that is in the pocket of someone who may not be disposed to cooperate. Now, we won't have that difficulty with the U. A. W., C. I. O., and probably won't have it with the Textile Workers Union, and probably won't have it with the Clerks' Union, C. I. O., but we may have a definite problem of that kind outside of that organization, particularly among the unorganized workers, and how are we going to get at that? I would like to have your reaction or idea about that. Do not you think we ought to apply some coercive legal force to it?

Mr. REUTHER. I think it is unfortunate that we do not have all the workers organized so that your union is a constructive force in all of these plants. It seems to me, however, if the organized workers, working jointly through their unions and the managements of the companies, will set a fine example for the Government, then if the management of corporations will follow through on the unorganized plants, I think they will also do a pretty good job. Of course, with the union in there pitching, we can do a better job, but I think the Treasury Department, working with the respective plants, can do a fairly good job on that basis.

Mr. DINGELL. I presume, of course, the A. F. of L. will follow the example of the C. I. O.

Mr. REUTHER. I understand they are in agreement with the basic principles I have stated here today.

Mr. DINGELL. You think the unorganized worker might be left to the Treasury to work out some sort of a plan with the management and workers in the unorganized plants; but that still leaves the man who refuses to cooperate out of the picture; he is still not covered in our discussion between you and me, and I feel there should be no slacker, cannot be any slacker dollar in the country.

Mr. REUTHER. I agree with that; but I think the way you mobilize democracy is by carrying this war to the people and make them understand, and I think you can jar 99.9 percent loose, and I do not think one-tenth of 1 percent is going to be very important.

Mr. DINGELL. I agree with you.

Mr. BOLAND. I was very much impressed with your statement here, but there is one point I would like to bring out. What would be your opinion of the workers' enthusiasm if Congress started to pass arbitrary labor legislation?

Mr. REUTHER. I think, to a very large extent, any arbitrary action on the part of Congress which would make this plan compulsory would take the edge off the enthusiasm. I mean the point is in a plant where we have local union officers, have local unions bargaining committees in the plants, have shop stewards in each department, each of those fellows will be captains in this campaign who are going to be beating the drums and pepping the boys up, and there will be competition between the departments, each one trying to see who can buy the most bonds, and there will be competition between the shifts in the shops, and there will be competition between one plant and another plant. But the minute you make it compulsory, it is an automatic proposition and you lose the benefit of all that campaign.

Mr. BOLAND. I appreciate all of what you say there, but I am assuming for the minute that Congress would start to pass arbitrary legislation against labor; does that not necessarily get back to killing that enthusiasm you are talking about?

Mr. REUTHER. That is right. I think sooner or later the people who are interested in running the war will realize that labor's morale, in the final analysis, is the thing that determines production.

Mr. BOLAND. After all, labor is going to win this war?

Mr. REUTHER. It is the man's attitude on the machine, and that is morale, and, if any arbitrary action is directed against labor, it will destroy that morale and, in destroying that morale, you destroy the very thing out of which more production will flow.

Mr. BOLAND. That is all; thank you.

Mr. REUTHER. I would like to say, Mr. Chairman, I would like to leave these with the committee, if you care to see them—some of the literature we have put out in this connection.

The CHAIRMAN. Whom will you call next, Mr. Secretary?

Secretary MORGENTHAU. Mr. Anderson, vice president of General Motors in charge of personnel.

The CHAIRMAN. Mr. Anderson, please identify yourself for the benefit of the record.

STATEMENT OF H. W. ANDERSON, VICE PRESIDENT, GENERAL MOTORS CORPORATION

Mr. ANDERSON. H. W. Anderson, vice president, General Motors.

At the time the Defense bonds were offered for sale by the United States Government we immediately developed a plan for the systematic purchase of these bonds by pay-roll deductions. That plan was put into effect in August 1941. We reviewed the results of that plan at the end of the year, and the results were rather disappointing; so we immediately said we would have to develop what we call a sales-promotion campaign to bring enthusiasm into this particular organization for the war effort.

This plan was developed in February. We could have introduced it in March, but we did not want to introduce it on March 15, because we thought it would have too much of a handicap at that date; so that we had the plan ready for April 16.

Mr. Jerpe here can put the plan on and explain it as he goes along and, if there are any questions before or after the plan is put on, I will be very happy to try to answer them.

The CHAIRMAN. The Chairman would like to say we appreciate very much and thank each and all of you for coming here this morning and explaining the arrangement that has been worked out between the management and the employees of your great industry. I feel it will have a most wholesome and reassuring effect, not only on those who have purchased bonds in the financing of this great war program and inspiring their patriotism, but at the same time it will reassure the taxpayers that there is full cooperation in the country, not only by the taxpayers but by industry and its employees, and that there is complete unity. This demonstrates to the country that all of us are going forward with this great war program in which we are all so vitally interested, and on which the the very life and liberty and salvation of our country depends.

I wish to congratulate you, and to congratulate the representatives of your employees, and labor, upon your splendid work, your patriotic efforts, and the success you have made in getting together. I think it will have a wonderful effect on the country.

Mr. ANDERSON. Thank you, Mr. Chairman.

Mr. DISNEY. I want to congratulate Secretary Morgenthau on being the spearhead for setting this in motion. It is primarily through him that it was started.

Mr. Anderson, how many employees has General Motors?

Mr. ANDERSON. At the present time we have 220,479.

Mr. DISNEY. How many of them make more than $2,300 per year?

Mr. ANDERSON. If you would like, I can give you some statistics here, but maybe not just in that order.

Mr. DISNEY. Can you supply that in the record and not take the time now?

Mr. ANDERSON. Yes, sir; I can.

Mr. DISNEY. And give me just an answer to that question—how many make more than $2,300 per year.

Mr. ANDERSON. Well, the average of the salaried group, which consists of 50,479, for the year 1941, was $2,631; the average for the hourly rated group for the year 1941 was $2,141. At the present current rate of employment, which is currently going at 45 hours per week, the hourly rated group will average $2,530.

(Mr. Anderson submitted the following table for the record:)

General Motors employment and pay rolls in United States

	1940 average	1941 average	March 1942
Employment:			
Hourly rated	190,576	221,759	[3] 170,000
Salaried	43,605	50,719	50,479
Total	234,181	272,478	220,479
Hourly earnings—average [1]	$0.956	$1.049	$1.15
Weekly earnings—average:			
Hourly rated [1]	$37.40	$42.73	[2] $50.60
Salaried	$48.00	$50.60	$60.90
Annual earnings—average:			
Hourly rated [1]	$1,904	$2,141	[2] $2,530
Salaried	$2,496	$2,631	$3,167

[1] Excludes allowances in lieu of vacation and for military service.
[2] Estimate based on 44 hours of work a week for 50 weeks a year. Present average is about 45 hours a week.
[3] Regular employes including intermittent workers.

NOTE.—With these earnings employees should be able to purchase $200 to $300 worth of bonds annually despite increase in cost of living.

The CHAIRMAN. We thank you for your testimony.

Who is your next witness, Mr. Secretary?

Secretary MORGENTHAU. Mr. Jerpe.

The CHAIRMAN. Please identify yourself for the benefit of the record.

STATEMENT OF JOHN M. JERPE, DIRECTOR OF GENERAL MOTORS BOND DRIVE FOR VICTORY ACTIVITIES

Mr. JERPE. My name is John M. Jerpe; I am director of the General Motors Bond Drive for Victory activities.

We have here [exhibiting], Mr. Chairman, a complete chart presentation that we wish to present to you at this time and to incorporate in the record. It covers the entire campaign plan.

The first chart is:

AN URGENT APPEAL IN OUR NATION'S FIGHT FOR LIFE

Then a series of charts follow:

General Motors Corporation has been called upon to play a vital part in today's national emergency. THE UNITED STATES GOVERNMENT HAS ASKED THAT OUR RESOURCES, PLANTS, EQUIPMENT AND PERSONNEL be geared to the production of essential war materials needed to protect our homes and defeat our enemies * * *

We have accepted that production responsibility and TODAY ARE PRODUCING THE ESSENTIALS OF WAR. We are making the machines and fabricating materials for instruments of war in ever-increasing quantities.

While everyone in the main understands the importance of an all-out production effort in armament building, VERY FEW PEOPLE REALIZE THE ADDED FINANCIAL RESPONSIBILITY they must now share TO PREVENT OUR DESTRUCTION AND RUIN.

TODAY, the cost of the Nation's Victory armament building program is reaching STAGGERING PROPORTIONS. From dawn 'til dawn—every 24 hours—our national war expenditures currently approximate $166,000,000. Think of it! Almost $7,000,000 per hour—and the cost is steadily rising!

Right now—

America must have the help of every living person to finance the cost of war TO INSURE ULTIMATE VICTORY. The importance of this cannot be exaggerated or over-emphasized!

Now—

The General Motors Corporation and every member of the great General Motors family as patriotic citizens have been called upon to do their part by liberally investing in UNITED STATES WAR BONDS.

Early in August 1941—

General Motors Corporation became one of the first to inaugurate a plan whereby General Motors employees could purchase U. S. WAR BONDS THROUGH PAY ROLL DEDUCTIONS. The majority of our employees, however, did not take advantage of this opportunity—mainly through lack of understanding and because our Nation was not at war.

Since then—

. . . Events have changed!
. . . Our shores have been attacked.
. . . Our island possessions invaded.
. . . Our citizens killed.
. . . Our future threatened.

America has changed from A NATION AT PEACE TO A NATION AT WAR.

May I call your attention, gentlemen, to a little thing above the banner at the center, that we have in very prominent spots throughout the corporation, reminding our people that we are at war and that we are not in "Business as Usual."

The next is—

THE SITUATION IS VERY GRAVE.

There is No Time for Complacency!
No Time for Selfishness!
No Time for Hiding Facts!
Uncle Sam is in a fight for Life and Freedom.
All Idle Dollars Must Go To Work.

—so Today

It becomes the responsibility of General Motors Corporation through its managerial and supervisory staffs to see to it that all employes thoroughly understand the purposes and benefits of the War Bond Program and that they are given the opportunity to participate to the fullest extent.

To properly discharge this responsibility General Motors will inaugurate and conduct A Bond Drive For Victory designed to reach every employee—at work and at home!

The Purpose of the Campaign will be to Encourage Every General Motors Employee to invest in War Bonds Every Pay Day.

and, thereby gain the objective of 100 Percent Employee Participation.

This objective will be accomplished in two ways:

1. Through Regular Pay Roll Savings.

The necessary procedure for employee investment in War Bonds through pay-roll savings is already established.

2. Outright Purchases Through the Corporation.

This procedure is not intended to supplant the systematic pay-roll saving method—but rather to supplement the pay-roll savings plan. Thus, General Motors will accommodate those employees who can and will make outright purchases of war bonds through the company from idle accrued savings.

The Campaign Emblem that will be in effect for the "Duration" will be—GM–saVe–serVe

The insignia contains the letter "V" for Victory, and the words "Save" and "Serve", which dramatize our fight for life in the present emergency

To make this campaign effective and to obtain desired results, it will be broken into three phases.

1. Pre-Announcement.

The period to arouse curiosity and stimulate employee interest.

2. Announcement.

The period when all employees will be contacted and given an opportunity to subscribe for the bonds.

3. Post Announcement.

The period involving individual employee follow-up and checking for results.

Pre-Announcement.

Past campaigns prove that Response was greatest where Interest was built up prior to the formal announcement.

The Zero Hour—April 16. General Motors Employees start a New Drive for Victory!

Therefore, to arouse the curiosity and maximum interest of the General Motors' employees in the War Bond Program, A Teaser Campaign will be conducted between April 8th and April 15th. The following activities and materials have been developed to help you attain your objectives.

When I say "you," gentlemen, we have appointed 90 campaign managers in 90 of our plants throughout the country. We have given these campaign managers this plan: We have told these men we are interested in 100 percent results; that we want them to use the plan as a track to run on and to supplement the plan with any other things they want to use; to come to us at the end of this month with a true report of 100 percent employee participation.

Bulletin Board Posters

The majority of General Motors employes pass the time clock several times a day. On the morning of April 8th, this mystery poster will appear near time clocks—on bulletin boards and other places where General Motors employes will see it.

The Zero Hour

General Motors Employes' Victory—April 16th

The insignia now is just two S's. We have not come out, did not come out on April 15 with anything more than teaser copy, and that is to arouse employee interest all over the United States. Then we had a campaign book with a very good lot of interpretations. One is "Sacrifice," another "Small Donations for Victory," and a number of others. No one knows, in General Motors, except we who built this plan, what S. S. V. means, but today at noon, throughout the land, we are having meetings of our employees wherever possible to have those meetings—rallies, if you please—where S. S. V. is being explained as "To Save and Serve for Victory."

The next is—

Teaser Stencil

To further arouse curiosity and interest in the campaign, this design will be provided for stenciling on floors, sidewalks and walls in and around the plant.

S. S. V.—April 16

We even furnish the paint, brushes, and stencils to be sure the job is done, and done very beatuifully.

Please notice, during the preannouncement period, April 8 to April 15, this teaser notice will be attached to the pay check or time card of all employees:

Zero Hour—April 16th. General Motors Employes start new Victory Drive.

Direct by Mail

To intrigue the interest of every General Motors worker and his entire family this direct-by-mail card, embodying teaser copy, will be mailed to all employes at their home addresses.

The teaser copy is what we call that, and all it says on that is "Zero Hour—April 16th. Employees save and serve," so as to build up interest in the thing, before we announce the campaign. By the way, we mailed out approximately 260,000 of those cards to employees' homes.

The next is—

PLANT PUBLICATIONS

Articles of a teaser nature regarding the campaign will be carried in all plant papers during the preannouncement period.

The next poster is—

The right kind of organization and execution of preannouncement activities will HELP INSURE THE ULTIMATE SUCCESS of the BOND DRIVE for VICTORY and enable you to launch your BOND SALES DRIVE with an outstanding announcement.

Then the—

ANNOUNCEMENT

It is highly important that the campaign announcement be made with all the force and drive that can be mustered. The announcement must be inspirational and stirring. It should reach the majority of General Motors employees on—

ANNOUNCEMENT DAY—APRIL 16TH

The following materials and suggested activities are provided to help you make your announcement most successful.

We have a 40 by 60 announcement rally poster posted in all of our plants at 7 o'clock this morning so that when the men came to work they saw they had to buck up to win the United States war program.

ANNOUNCEMENT RALLIES

Announcement rallies should be held at all plants and division locations on April 16th. At plant locations where more than one shift is involved, the announcement should be repeated for each shift.

In any event it should be made at a time when it will not interfere with production.

Announcement rallies should be planned with care and consist of—

1. Martial music.
2. Campaign speaker.

The program should be of less than 30 minutes duration, and it is highly important that the speaker have the ability to make a stirring, inspirational address.

We wrote the speech for all of our campaign managers. We have not asked them to memorize the speech, but we have asked them to take the substance therein and use that as a guide to get the job done.

The next poster is the meat of our entire campaign—

APPLICATION CARD

A. In order to facilitate employees' participation in the Bond Drive for Victory through authorized pay-roll savings, department heads and foremen will distribute a specially addressed, sealed envelope containing—

And the container envelope itself has the name of the employee printed on the outside and contains an application card for participation in the Bond Drive for Victory in this form [indicating], and on the bottom of it we say:

Be sure that all invest and save and serve for victory.

The employee's name is also on this card. In addition to the application card and container envelope, we have a booklet here that describes the Government's bond sale plan. We also have an envelope that the employee can put his application card in and send that back to us. In addition to that, we have a button he puts on that says "I am buying bonds in General Motors Save and Serve for Victory Bond Drive."

Now I think I should explain to you gentlemen how the cards will be handled. Within 3 days, or on April 19th, we want all cards returned. Then those cards will be sorted and those who agree to participate, their names go to our comptroller's office and pay-roll deductions start. Those who do not agree to participate must certainly have good, definite reasons for doing that. We will try to encourage them to do a little bit more than what they fail to do in the origin of the campaign. We also have a plant letter that goes to every employee from his plant manager, which reads:

GENERAL MOTORS CORPORATION,
Detroit, Mich., April 16, 1942.

An Important Message to All General Motors Employees:

Today you saw the announcement of the GENERAL MOTORS EMPLOYEES BOND DRIVE FOR VICTORY. Its purpose is expressed in the theme, "Save and Serve for Victory."

This drive deserves your support. We are engaged in a strenuous war that demands every last ounce of energy, every ability and every resource available before victory can be won.

Beside working hard at our jobs, you and I can help in another way. We can help by raising funds to pay for planes, tanks, guns, ships, ammunition, and other war equipment produced in such large quantities that no enemy can compete with us.

Our subscription to a bond enables the United States Government to carry on these war production activities. It likewise sets aside cash for our own convenience in the future.

Save through bonds. Every bond is redeemable in cash with interest. This means a useful personal savings fund on hand when the war is over—a protection for you and the welfare of your family.

Serve with bonds. They provide the material for our fighting forces to defeat the enemy. They produce the military power that will protect our lives and liberty.

All the information on how to obtain bonds is given in the attached booklet. Read it carefully.

We urge you to support our country and our fighting men by subscribing for bonds to the limit. The amount you lend goes to protect yourself and your family and preserve liberty.

Save and Serve for Victory!

Cordially yours,

C. E. WILSON, *President.*

B. Department heads and foremen should inform employees that—

The application card MUST BE RETURNED regardless of whether the employee subscribes to the Drive, increases his participation in it or does nothing about it. A return envelope is provided for this purpose.

Each new employee should be given a

PAY-ROLL SAVINGS APPLICATION CARD

when he is signed up and an effort made to secure his participation in the plan at that time. If he does not enroll in the plan, he should be followed up each 30 days thereafter.

Bulletin-board posters took the place of the teaser card this morning, and at 7 o'clock this morning we changed from the teaser card to an announcement poster.

BULLETIN-BOARD POSTERS

On April 16th, immediately following the Announcement Rally, the teaser posters on time clocks, bulletin boards and other places where General Motors employees congregate, will be replaced with this attention-arresting announcement poster.

ILLUMINATED SIGN

To serve as a constant reminder of the drive, this animated and illuminated sign will be placed near time clocks and at other points where it may be seen by large groups of employees. It will remain in use throughout the entire drive.

And here is the kind of sign we have [indicating]. We have 1,000 of them, and we have them over every time clock and everywhere our people come. It reads:

General Motors Employees' Bond Drive for Victory.
A Bond Pays Off—in Victory—in Liberty—in Cash.

The next is—

WINDSHIELD STICKER

This sticker on car windshields is another means for publicizing the drive. A larger size sticker for home windows is also supplied.

This sticker in your home window indicates you are a participant in the drive.

The second mail piece is a piece of the teaser card mailed between April 8 to April 15. This piece goes to every one of our employees at home today—

DIRECT BY MAIL TO EMPLOYEE'S HOME

This attractive direct-by-mail folder containing complete information regarding the Bond Drive for Victory will be mailed to the home address of all General Motors employees on Announcement Day.

HE IS DOING HIS BEST

We have a picture of a soldier over anywhere where fighting is going on and we say to our people, "You can help him. Let your dollar fight. Save and Serve for Victory," with the balance of the material therein.

The next step is—

QUOTA BOARDS

Quota boards will be displayed on Announcement Day showing the established objectives for all divisions, plants, and departments. In cases where plants operate on shifts, additional boards will be supplied to record the percentage of participation among the employees of each shift.

A master quota board will be displayed in the General Motors building showing the quotas established for all General Motors divisions.

Behind you, gentlemen, we have two small quota boards that we call "Departmental Boards." In our plants, we operate plants, departments, and shifts. Sometimes we have two shifts, sometimes three, so we put a shift and a department quota board in line, and then we post them at the same time, so if No. 1 shift gets red on the

thermometer higher than No. 2 or No. 3, right there they will do a better job than if we asked them to do it, because they do not want to see anybody get 100 percent before they do, because that is the American way.

Then we have a big board that we use to handle the management. The big board is placed in the lobby where the management or other people can see it, and that shows just what that particular plant is doing. Remember, we have 93 plants, so we had to get 93 boards, and they show what each plant is doing in the drive, and we are insisting, in a kind way, on having everybody hit that ball on April 30th, when the drive ends. But that, of course, is not the end of the activity; that is merely a splash of enthusiasm that we are putting in the program, and we will follow through every month to see that this activity is 100 percent every month until the war is over.

Then we have display banners [exhibiting]—

DISPLAYS

To stimulate further interest in the campaign, entrance, lobby, and window displays should be used during the announcement period wherever possible.

PLANT PUBLICATIONS

Current issues of all plant papers will publish reports on the progress and results of General Motors Employees'

BOND DRIVE FOR VICTORY.

NEWSPAPER PUBLICITY

Appropriate newspaper publicity stories will be supplied. These should be released following the Announcement, accompanied by photographs of Bond Drive activities at plant locations.

The photographs are to be taken locally.

If Announcement activities are properly handled, every employee will thoroughly understand the entire plan and be impressed with the importance of each individual's participation.

POST ANNOUNCEMENT

While the Announcement of the campaign is important, we cannot hope to attain our objective during the brief Announcement period. It is essential therefore that a well-organized, sustained Post-Announcement activity be carried on.

To reach the ultimate goal of 100 percent EMPLOYEE PARTICIPATION in the BOND DRIVE FOR VICTORY the following Post-Announcement Activities are presented—

MINUTE MEN RALLY

To maintain morale and keep interest at a high pitch, Minute Men Rallies should be conducted in all plants and divisions.

Programs conducted at these rallies should be short, carefully planned, and include reports on progress made to date.

We have changed this from a monthly basis to weekly and that [indicating] will be posted all over our plants.

Here is an idea of the type of posters we are going to use:

BONDS BUY BULLETS

YOUR BONDS BUY BOMBS

BUY A BOND TODAY

FOR THEIR SAKES [A poster containing a picture of children in bed] BUY BONDS

SLAP THAT JAP. EVERYONE BUYING BONDS

THEY FLY WHEN YOU BUY BONDS. FOR VICTORY TOMORROW, BUY A BOND TODAY

PUBLICITY

Following the Announcement a continuous flow of publicity will be directed to employees through—

NEWSPAPERS, PLANT PAPERS, G. M. FOLKS, AND SALES NEWS

QUOTA ATTAINMENT AWARDS

In recognition of individual, plant or departmental participation, these special awards will be made.

I am just human and I know, if anyone gives me a card with my name on it, that it at least has appreciation contained therein. I keep it, and I think we are all about the same way. So here [exhibiting] Mr. Wilson, who is president of General Motors Corporation, is giving this card, pocketbook size, to all employees who participate. It is merely a recognition thing:

JACK JERPE,
Central Office, General Motors.

As a fellow employee, I congratulate you on your participation in the General Motors Employees' Bond Drive for Victory.

C. E. WILSON, *President.*

Every employee gets that.

DEPARTMENTAL AWARD

Each department securing 100 percent participation will be given this special General Motors Award.

100 percent General Motors Employees Bond Drive for Victory.

We sales promotion men are always guilty of extravagance. I ordered 2,000 General Motors award banners. Then we questioned the field on what they thought we needed, and I had to up that order to 4,500 General Motors award banners. I may say now that the drive is just starting and we have quite a few departments in the corporation that are already 100 percent subscribed.

Last, and very important, is our—

PLANT AWARDS

Each plant attaining 90 percent EMPLOYEE PARTICIPATION OR MORE will receive this special flag from the United States Treasury Department.

Then there is a picture of the flag they will obtain.

THROUGH ENTHUSIASTIC AND UNIFIED EFFORT

Every individual employee in General Motors will gain full knowledge of the urgency, the purposes, the excellence of U. S. War Bonds as an investment and—

THE SUCCESS OF THE S. S. V. CAMPAIGN WILL BE ASSURED

AND General Motors and General Motors' employees will SAVE and SERVE for VICTORY.

(The following charts were displayed by Mr. Jerpe:)

RIGHT NOW

America must have the help of every living person to finance the cost of war

To Insure

ULTIMATE VICTORY

The Importance Of This Cannot Be Exaggerated Or Over-emphasized !

NOW . . .

The General Motors Corporation and every member of the great General Motors family as patriotic citizens have been called upon to do their part by liberally investing in

UNITED STATES *War* BONDS

Early in August, 1941 ››

General Motors Corporation became one of the first to inaugurate a plan whereby employes could purchase

U.S. War BONDS
THROUGH PAYROLL DEDUCTIONS ››

The majority of our employes however, did not take advantage of this opportunity . . . . .

*mainly through lack of understanding and because our nation was not at war.

Since then ››

EVENTS HAVE CHANGED!

..our shores have been attacked.
..our island possessions invaded.
..our citizens killed.
..our future threatened.

America has changed from

A NATION AT PEACE ›› TO A NATION AT WAR!

THE SITUATION

IS VERY GRAVE

There is

NO TIME
.. *for Complacency!*

NO TIME
.. *for Selfishness!*

NO TIME
.. *for Hiding Facts!*

Uncle Sam is in a fight
for Life and Freedom.

ALL IDLE DOLLARS
MUST GO TO WORK!

··SO TODAY

it becomes the

Responsibility

of

General Motors Corporation

through its Managerial and Supervisory Staffs

to see to it that all employes thoroughly understand the purposes and benefits of the

★ War SE ★

BOND PROGRAM

and that they are given the opportunity to participate to the fullest extent.

To properly discharge this responsibility · ·

GENERAL MOTORS

will Inaugurate and Conduct

A BOND DRIVE FOR

★ VICTORY

Designed to reach every employe · · ·

at work and at home!

THE PURPOSE OF THE CAMPAIGN

will be to..

ENCOURAGE

EVERY
GENERAL MOTORS
EMPLOYE

to Invest in

~~DEFENSE~~ *War* BONDS

Every Pay Day

and, thereby gain
the objective of..

100%

EMPLOYE
PARTICIPATION

★

THIS OBJECTIVE WILL BE ACCOMPLISHED IN TWO WAYS:

1 ★ THROUGH REGULAR PAYROLL SAVINGS

The necessary procedure for employee investment in Defense Bonds through payroll savings is already established.

2 ★ OUTRIGHT PURCHASES THROUGH *the* CORPORATION

This procedure is not intended to supplant the systematic payroll saving method ... but rather to supplement the payroll savings plan. Thus, General Motors will accommodate those employes who can and will make outright purchases of ~~Defense~~ War Bonds through the Company from idle accrued savings.

★ ★ *The* ★ ★

CAMPAIGN EMBLEM

.. that will be in effect for the "Duration" will be

The insignia contains the letter "V" for Victory and the words *Save* ... *Serve* .. which dramatize our "*Fight for Life*" in the present emergency.

··To make this campaign effective and to obtain desired results,··it will be broken into *three phases*··

1 PRE-ANNOUNCEMENT

The period to arouse curiosity and stimulate employe interest.

2 ANNOUNCEMENT

The period when all employes will be contacted and given an opportunity to subscribe for the Bonds.

3 POST-ANNOUNCEMENT

The period involving individual employe follow-up and checking for results.

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

PRE-ANNOUNCEMENT

Past campaigns *prove* that·

RESPONSE
was Greatest
where
INTEREST
was Built up
prior to the formal Announcement.

Therefore..

...to arouse the curiosity and maximum interest of the General Motors employes in the War Bond Program.

A TEASER CAMPAIGN

will be conducted between

APRIL 8TH and APRIL 15TH

The following activities and materials have been developed to help you attain your objectives:

BULLETIN BOARD POSTERS

..The majority of General Motors employes pass the time clock several times a day. On the morning of April 8th, this mystery poster will appear near time clocks ..on bulletin boards and other places where General Motors employes will see it.

TEASER STENCIL

..To further arouse curiosity and interest in the campaign..this design will be provided for stenciling on floors, sidewalks and walls in and around the plant.

TEASER NOTICE

During the Pre-Announcement period, April 8th to April 15th, .. this teaser notice will be attached to the pay check or time card of all employes.

DIRECT-BY-MAIL

..To intrigue the interest of every General Motors worker and his entire family this Direct-by-Mail card, embodying teaser copy, will be mailed to all employes at their home addresses.

PRE-ANNOUNCEMENT CAMPAIGN

PLANT PUBLICATIONS

..Articles of a teaser nature regarding the campaign will be carried in all plant papers during the Pre-Announcement period.

PRE-ANNOUNCEMENT CAMPAIGN

··The right kind of organization and execution of pre-announcement activities will *Help Insure*

THE ULTIMATE SUCCESS

of the

BOND DRIVE *for* VICTORY

··and enable you to launch your Bond Sales Drive with an *outstanding announcement*

ANNOUNCEMENT

··It is highly important that the Campaign announcement be made with all the force and drive that can be mustered. The announcement must be *inspirational* and *stirring.* It should reach the majority of General Motors employes on . . . .

ANNOUNCEMENT DAY APRIL 16TH

The following materials and suggested activities are provided to help you make your announcement most successful . . . .

ANNOUNCEMENT RALLIES

★Announcement rallies should be held at all plants and division locations on April 16th ★ ★ At plant locations where more than one shift is involved, the announcement should be repeated for each shift.

In any event it should be made at a time when it will not interfere with production ★ ★ ★ ★

ANNOUNCEMENT CAMPAIGN

...Announcement Rallies should be planned with care *and consist of*..

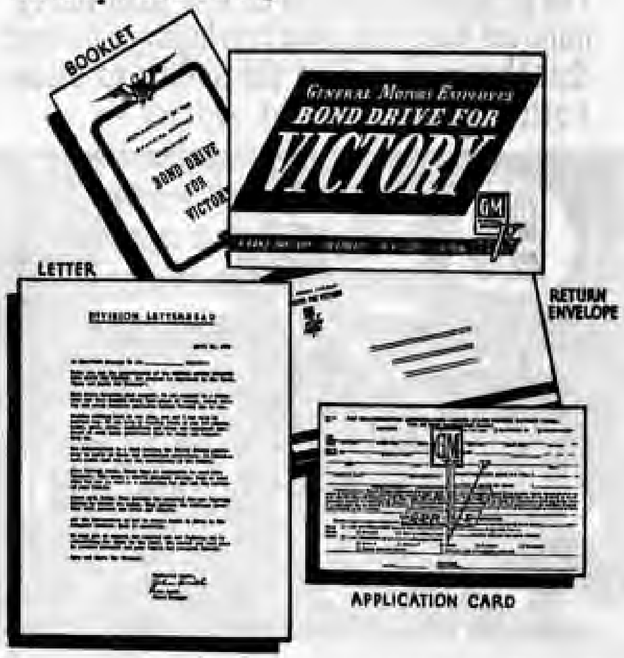
1·MARTIAL MUSIC
2·CAMPAIGN SPEAKER

The program should be of less than thirty minutes duration, and it is highly important that the speaker have the ability to make a stirring, inspirational address .....

ANNOUNCEMENT CAMPAIGN

APPLICATION CARD

A In order to facilitate employes' participation in the Bond Drive for Victory through authorized payroll savings, department heads and foremen will distribute a specially addressed, sealed envelope containing:



ANNOUNCEMENT CAMPAIGN

B Department heads and foremen should inform employes that ››

The Application Card
MUST BE RETURNED

regardless of whether the employe subscribes to the Drive, increases his participation in it or does nothing about it. ›› A return envelope is provided for this purpose.

Each new employe should be given a • •

PAYROLL SAVINGS APPLICATION CARD

when he is signed up

• • and an effort made to secure his participation in the plan at that time ★ ★ If he does not enroll in the plan, he should be followed-up each thirty days thereafter ★ ★ ★ ★ ★ ★

ANNOUNCEMENT CAMPAIGN

BULLETIN BOARD POSTERS

On April 16th, immediately following the Announcement Rally, the teaser posters on time clocks, bulletin boards and other places where General Motors employes congregate, will be replaced with this attention-arresting announcement poster.

ILLUMINATED SIGN

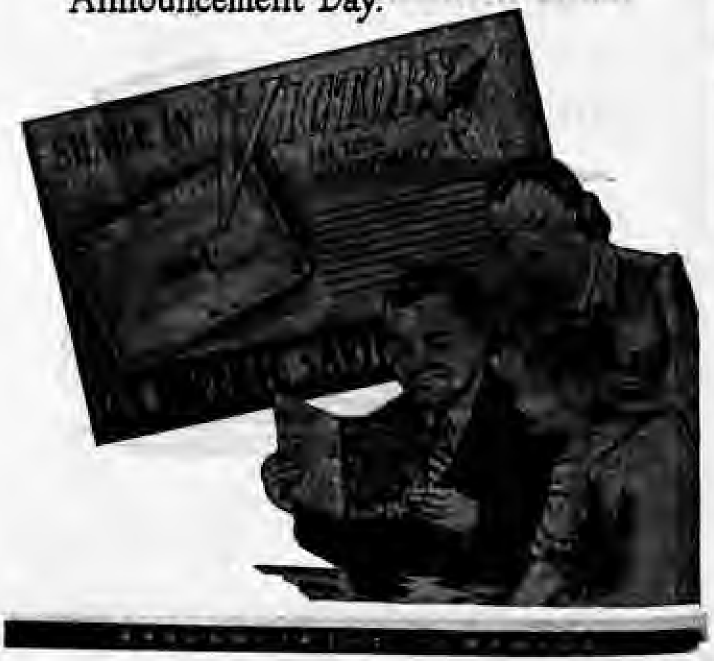
"To serve as a constant reminder of the drive, this animated and illuminated sign will be placed near time clocks and at other points where it may be seen by large groups of employes...It will remain in use throughout the entire drive.

WINDSHIELD STICKER

This sticker on car windshields is another means for publicizing the drive.
A larger size sticker for home windows is also supplied.

DIRECT-BY-MAIL TO EMPLOYE'S HOME

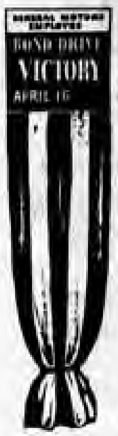
..This attractive direct-by-mail folder containing complete information regarding the Bond Drive for Victory will be mailed to the home address of all General Motors employes on Announcement Day.



QUOTA BOARDS

Quota boards will be displayed on Announcement Day showing the established objectives for all divisions, plants and departments. In cases where plants operate on shifts, additional boards will be supplied to record the percentage of participation among the employes of each shift.

A master quota board will be displayed in the General Motors Building showing the quotas established for all General Motors Divisions.



DISPLAYS

★ ★ To stimulate further interest in the campaign-entrance, lobby and window displays should be used during the announcement period wherever possible.

ANNOUNCEMENT CAMPAIGN

PLANT PUBLICATIONS

· · Current issues of all plant papers will publish reports on the progress and results of General Motors Employes'

"BOND DRIVE for VICTORY"

ANNOUNCEMENT CAMPAIGN

NEWSPAPER PUBLICITY

Appropriate newspaper publicity stories will be supplied. These should be released following the Announcement, accompanied by photographs of Bond Drive activities at plant locations...

The photographs are to be taken locally.

If Announcement activities are properly handled, every employe will thoroughly understand the entire plan and be impressed with the importance of each individual's participation.

ANNOUNCEMENT CAMPAIGN

POST-ANNOUNCEMENT

While the Announcement of the campaign is important ·· we cannot hope to attain our objective during the brief Announcement period. It is essential therefore that a well-organized, sustained Post-Announcement activity be carried on.

To reach the ultimate goal of

100%-EMPLOYE PARTICIPATION

in the

BOND DRIVE FOR VICTORY

·· the following Post-Announcement Activities are presented · · · ·

MINUTE MEN RALLY

To maintain morale and keep interest at a high pitch, Minute Men Rallies should be conducted in all plants and divisions ★ ★ ★ ★

Programs conducted at these rallies should be short, carefully planned, and include reports on progress made to date.

60603—42—pt. 30——8

MONTHLY POSTERS

Following the Announcement posters,

NEW POSTERS

will be furnished monthly.

★

JUNE APRIL JULY

MAY AUGUST

PUBLICITY

..Following the Announcement, a continuous flow of publicity will be directed to employes..

through . . .

- ★ NEWSPAPERS
- ★ PLANT PAPERS
- ★ G.M. FOLKS .. and
- ★ SALES NEWS

QUOTA ATTAINMENT AWARDS

In Recognition..

of individual, plant or departmental participation, these special awards will be made: . . . .

POST ANNOUNCEMENT CAMPAIGN

DEPARTMENTAL AWARD

"Each department securing 100% participation will be given this special General Motors Award.

100%
General Motors Employes
BOND DRIVE FOR VICTORY

POST ANNOUNCEMENT CAMPAIGN

PLANT AWARDS

Each plant attaining

90%

EMPLOYE PARTICIPATION

OR MORE··

will receive this special flag from the United States Treasury Department.

POST-ANNOUNCEMENT CAMPAIGN

THROUGH ENTHUSIASTIC AND UNIFIED EFFORT ··

Every individual employe in General Motors will gain full knowledge of the urgency··the purposes·· the excellence of U.S. War Bonds as an investment··and

THE *SUCCESS* OF THE S.S.V. CAMPAIGN WILL BE *ASSURED*

and ..

★ General Motors and General Motors' employes will ..

SAVE AND SERVE FOR VICTORY

AN *Urgent* APPEAL in OUR NATION'S FIGHT FOR LIFE

GM
GENERAL MOTORS

General Motors Corporation has been called upon to play a vital part in today's national emergency.

THE UNITED STATES GOVERNMENT
has asked that our ..

- **RESOURCES**
- **PLANTS**
- **EQUIPMENT** .. and
- **PERSONNEL**

be geared to the production of essential war materials needed to protect our homes and defeat our enemies ....

While everyone in the main understands the importance of an "all-out" production effort in armament building . . . .

VERY FEW PEOPLE

Realize the

ADDED FINANCIAL RESPONSIBILITY

they must now share

*** TO PREVENT OUR DESTRUCTION AND RUIN**

Mr. JERPE. I thank you, gentlemen.

Mr. ROBERTSON. Mr. Jerpe, do you have a dealer in each city and county in the United States?

Mr. JERPE. Yes; we do have, sir.

Mr. ROBERTSON. The Secretary of the Treasury has a voluntary committee for the sale of bonds in each country and city. Would it be practicable for you to send a set of those wonderful charts to each one of your dealers, to be used in each county and city to give them an idea of how you are putting this campaign on?

Mr. JERPE. We have already agreed, Mr. Robertson, to provide the Secretary and his Department with 1,000 of these charts, done in desk easel form, 14 by 11, that Mr. Gamble will take out in the field to his regional people. And if Mr. Gamble wants any more help, we will very gladly supply him with all the printed material he asks for through the corporation or through my organization.

Mr. TREADWAY. I want to say if there is anything lacking in the campaign of General Motors, for one individual here, I fail to see it. I think you have covered the case wonderfully.

Mr. JERPE. Thank you, sir.

Mr. TREADWAY. I want to ask you just one question: The representative of the C. I. O. made a very definite statement as to what members of the C. I. O. intend to do and have done, and I wanted to ask whether or not there is any likelihood of duplication between your efforts and their efforts among your employees?

Mr. JERPE. I am not qualified to answer that, sir. I think Mr. Anderson might answer that for you.

Mr. ANDERSON. I think there will be some duplication of effort. However, I do think their effort will be joined with our effort, and the employees in our plant will join in the purchase of bonds.

Mr. HEALEY. It is very likely that during the progress of this campaign you will coordinate your efforts with the efforts of the representatives of the employees?

Mr. ANDERSON. That is right.

Mr. HEALEY. And undoubtedly some means will be found for coordinating the efforts of all the people in this particular plan.

Mr. ANDERSON. It is not a General Motors plan; it is a General Motors employee plan.

Mr. HEALEY. I want to congratulate you on this splendid advertising campaign connected with this drive. I am sorry every Member of Congress could not have been here this morning to have heard all you gentlemen.

Mr. REED. I just want to say to you gentlemen that I think you made a marvelous presentation.

I wish to make this further comment, that if the employees of General Motors do as magnificent a job in this drive as they did during the first World War I know of no institution that will surpass them.

Mr. JERPE. That is very kind, sir; thank you.

Mr. ROBERTSON. If the gentlemen representing General Motors are through, I would like to ask the Secretary one question.

Secretary MORGENTHAU. I just wanted to say to the gentlemen of the committee that I appreciate very much your courtesy in letting us come here this morning and explain this plan to you. I also appreciate Senator George coming over.

General Motors have done a very fine job. As I said earlier, we have some 54,000 other business concerns that have established a plan, and we expect to get the benefit of the success of this very carefully thought-out and elaborate plan of General Motors and apply that, we hope, to all of those 54,000 corporations. That number is constantly increasing. We now have enough corporations who have established such a plan that we are reaching 20,000,000 out of the 30,000,000 employees in industry, and our program is to reach the entire 30,000,000 people in industry so there will be regular pay-roll deductions every week on a voluntary basis.

The thing I wanted the opportunity to show was that it is not only a question of the amount of money, but it is the amount of enthusiasm which goes into the plan, and which can only be instilled if it is voluntary. If it is a matter of legislation, with an automatic deduction, then all of this thought and effort which is going into this work naturally would not be necessary. It would be very much easier from the Treasury's standpoint, if there were a law which provided for the deduction of a certain amount each week. But I personally feel that when each employee decides in his own home that this is what he wants to do, then that will go a long way toward helping win this battle we are facing.

Mr. COOPER. Mr. Secretary, I am glad to join with other members of the committee in congratulating you and the General Motor Corporation and the employees of that corporation for this splendid, patriotic effort, and for this excellent presentation which has been made here today.

I am likewise interested in the effort which I am sure you are exerting to reach the other 100,000,000 people of the country, in addition to the 30,000,000 employees in industry.

Do you desire to give us any information at this time along that line?

Secretary MORGENTHAU. I do not want to try the patience of the committee, but we have plans we are preparing now whereby we hope to fix a definite amount that we expect from every county and town in the United States, and in this plan we will use not only the voluntary organization which the Treasury has built up, but we have some 5,000 committees already organized with over 100,000 volunteer members of the committees, and we expect to go into every community and ring every doorbell in the United States at least once a month.

Mr. DINGELL. Mr. Secretary, I am still persistent in trying to obtain some answer to the question I raised with Mr. Reuther.

The vountary side of the game is well and good, and I presume that probably the number of slacker dollars will be very few as the campaign develops. But would you recommend in that connection, or would there be any coercion whatsoever directed toward certain people who may scoff at the plan and not have anything to do with it?

Secretary MORGENTHAU. Mr. Dingell, when you have a true volunteer plan you cannot have coercion, and we cannot bring pressure to bear on the people.

We in the Treasury very carefully weighed two alternatives, the volunteer plan, with the possibility that there would be a residue in each community who will not subscribe, as against forced savings.

We made a very close study of the various campaign methods used during the First World War. We do not expect to paint anybody's

house yellow, and we do not expect to put them behind barbed wire if they do not subscribe to these bonds.

Those people who do not will have to decide in their own conscience why they do not, and the community itself will be able to judge them.

But I am hopeful, and I have sufficient confidence in the American people to believe that the number of people who have the money but refuse to buy the bonds will be such a small number that the good of this campaign, I believe, so far outweighs the possibility of an unfavorable effect that, as far as I am concerned, and Congress being willing, we will continue along this path, unless Congress directs us to do otherwise.

Mr. DINGELL. Mr. Secretary, I am not advocating any stockade or coercive, repressive methods, but the Treasury did make a recommendation here, I think the last time you appeared before the committee, which led me to ask that question, and I was wondering whether you would be satisfied with skimming off what you could obtain from a volunteer effort, with the cooperation of labor and management and the Government, and if so, with that percentage, however small it may be, the Treasury may be willing to pass that by, or make certain recommendations.

Mr. COOPER. I do not think he meant the Treasury recommended a compulsory plan. The Secretary recommended the installment paying of taxes.

Mr. DINGEL. That is right.

Mr. ROBERTSON. Mr. Secretary, when you appeared before us on March 3 I asked you about compulsory savings, and you very strongly recommended that we do not at this time adopt compulsory savings, but give you an opportunity to try out the voluntary plan.

When you returned on March 6 and we had the debt limit bill before us, I again brought up the subject and asked you how long you thought it would take you to arrive at a conclusion as to whether or not the voluntary plan would successfully function, and to that question you replied as follows:

> I would say between now and the 1st of July.

Are you still of that opinion?

Secretary MORGENTHAU. Yes, sir.

Mr. ROBERTSON. You realize that you only have 2 months and 14 days before the 1st of July.

Mr. CARLSON. Mr. Secretary, I could not let this opportunity go by without referring to one large voluntary sales organization in the United States for the sale of bonds, and that is the triple A organization under the Department of Agriculture.

I am personally acquainted with this program in the State of Kansas. They held a State meeting and decided to sell $1,000,000 worth of bonds between January 1 and March 1, actually they sold $3,000,000 worth of bonds between January 15th and April 15th. This means that the Kansas farm organization has sold on the average one $25 bond for every farm in the State during this period. The 13 States that comprise the western region of the A. A. A. have sold at least $20,000,000 worth of bonds during the same period. I do not have the figures for all of the States but do want to mention that the State of Wisconsin has sold over $5,000,000 worth of bonds and this is an average of six $25 bonds per farm. This work is progressing very satisfactorily without much noise or fanfare. There is no more patriotic group in the United States than the farmers of this Nation.

Secretary MORGENTHAU. Under the triple A organization they have their county committees, and the National Grange had a meeting in Worcester and gave us wholehearted support of the farm organizations, and they have been perfectly magnificent.

Of course, I do not need to tell you that this is a big country, and while it might be questioned whether it would be generally followed, you can see that if we could make a drive like this in industry and labor it will not take very long, and the thing that gives me so much satisfaction is that in a drive like this, which must have cost General Motors many thousands of dollars to prepare, they are perfectly willing, not only to put the literature at the disposal of any other company, and also their men who are very familiar with it and are perfectly willing to do anything they can to assist. They want to help us to present this to other companies and show them its technique which they, on account of their experience and intelligence, are able to devise.

Mr. TREADWAY. Mr. Secretary, pardon me for intruding again, but Mr. Healey, a member of our committee, made the observation a few minutes ago that he wished every Member of Congress could have been present to hear this presentation this morning.

I offer the suggestion, and, if it is in order, I will make it in the form of a motion, that the clerk of the committee be authorized to secure from the Government Printing Office a thousand copies of this hearing for distribution.

If that is in order, Mr. Chairman, I make such a motion.

The CHAIRMAN. Whether it is in order or not, without objection, it will be acceded to.

Mr. Secretary, I want again to congratulate you and each of the witnesses who came with you for the fine presentation that has been made of this subject, and also for the splendid exhibits you have shown us. I want not only to congratulate you but thank you, because the chairman believes it will be most helpful to the committee, and the publicity will have a salutary effect throughout the length and breadth of the land.

We are glad to have with us this morning Senator George, the chairman of the Senate Committee on Finance, and we will be very glad to have a statement from him at this time, if he desires to make one.

STATEMENT OF SENATOR WALTER F. GEORGE, A SENATOR FROM THE STATE OF GEORGIA

Senator GEORGE. Mr. Secretary, I simply want to say that I think the job done by General Motors and the workers in General Motors was most thorough, and I believe it will be productive of great enthusiasm throughout the country for the voluntary program.

I think a voluntary program must be all voluntary, or else the program must be compulsory, and if it can be worked out on the voluntary basis—and I am convinced it can be—it will be infinitely better for the country and better for the Treasury in the long run, although there is more work involved.

I am very happy to have been invited this morning to attend this hearing and to have heard about this plan.

I thank you very much, Mr. Chairman, for giving me the privilege.

The CHAIRMAN. Let me say, Mr. Secretary, I am 100 percent behind the voluntary program.

The committee will take a recess at this time until 1:30 o'clock this afternoon.

(Thereupon, the committee took a recess until 1:30 p. m. of the same day.)

AFTERNOON SESSION

(The committee reassembled, pursuant to the taking of recess, at 1:30 p. m., Hon. Jere Cooper presiding.)

Mr. COOPER. The committee will please come to order. Mr. Paul, you may proceed.

ADDITIONAL STATEMENT OF RANDOLPH E. PAUL, SPECIAL TAX ADVISER TO THE SECRETARY OF THE TREASURY

Mr. PAUL. Mr. Chairman and gentlemen, in his statement to your committee on March 3, 1942, the Secretary of the Treasury recommended the taxation of interest from outstanding as well as future issues of State and local securities. I should like now to discuss this recommendation more fully and to present supporting evidence.[1]

I. THE ECONOMIC ISSUES

The present war emergency makes the immediate elimination of tax-exempt securities an important step in sound war finance. Under war conditions the withdrawal of the tax immunity from future issues alone will not be enough. What is required now is the immediate removal of tax exemption in all cases in which the Federal Government is not bound by its own pledge.

1. *The revenue loss from tax exemption is substantial.*—The annual loss in revenue from the tax exemption of State and local securities under the rates proposed by the Treasury is estimated at $275,000,000[2] at 1942 levels of business.

2. *The revenue loss from tax exemption will continue to increase.*—This is a large amount, but the continuance of the existing tax exemption would not stabilize the revenue loss even at that large figure. If the tax exemption were removed only from future issues, a considerably larger revenue loss could result merely from the shifting of outstanding issues from holders subject to little or no income taxes to those subject to higher rates.

Of the $20,000,000,000 of such securities outstanding on June 30, 1941, $12,000,000,000 were held by tax-exempt institutions, governments, banks, insurance companies, and, to a small extent, other business corporations (table 1 and chart 1). The securities of these holders are a huge reservoir from which individuals could increase their tax-free holdings by as much as 150 percent, even if the tax-exemption privilege were immediately removed from all new issues. Additional shifts are possible from individuals in low-income groups to individuals in high-income groups.

[1] Some of the detailed evidence is supplied in appendixes.
[2] At present rates the loss is estimated at $184,000,000.

49093—42—pt. 20——7

All such transfers of outstanding tax exempts to individuals with large incomes yield nothing by way of lower interest rates to State or local governments. The benefits of such transfers are confined mainly to the sellers, who obtain windfall capital gains, and to the buyers, who obtain exemption from regular and wartime income taxes.

3. *Tax rate increases stimulate tax avoidance.*—Even before 1941, the trend toward the concentration of tax-exempt securities in the hands of individuals in the upper income brackets had become noticeable. State and local securities have constituted an increasing percentage of the total assets of large estates, and there has been a pronounced and consistent tendency for tax-exempt securities to constitute a greater percentage of the larger than of the smaller estates. For net estates of $1,100,000 and over, State and local securities averaged 6.2 percent of the gross estate in 1928 and 15.1 percent in 1940 (table 2 and chart 2).

We may reasonably expect a further increase in the movement of tax-exempt securities into the hands of those with large incomes because the recent and anticipated tax rate increases provide new and powerful motives to individuals with large incomes to use this means of tax avoidance. Under the 1942 tax rates proposed by the Treasury, an individual with a surtax net income of $100,000 from other sources would obtain as large a net return, after taxes, from a 2½ percent municipal bond as from a taxable investment yielding 20.8 percent. Other illustrations are presented in table 3.

4. *The outstanding tax-exempt securities were not purchased in anticipation of wartime tax rates.*—The continuance of the tax exemption of interest on State and local securities enables the holders of these securities to avoid not only the pre-war scale of income taxes, but also the tax rate increases necessitated by the war. Most of the outstanding bonds were issued long before there could have been any serious expectation of wartime tax rates. Of the $20,000,000,000 of State and local securities outstanding, $14,400,000,000, or almost three-quarters of the total, has been outstanding for 5 years or more, and $10,700,000,000, or over half of the total, for 10 years or more (table 4).

Tax exemption enables the holders of State and local securities to enjoy an exemption for which few, if any, can be said to have paid a price at all commensurate with the benefits received. Insofar as the coupon rates of interest and the market prices of State and local securities reflected the tax exemption privilege at all, they reflected exemption from much lower tax rates than those in prospect, and, in most cases, than those already in force. A person with income from other sources of $100,000, who purchased a 4-percent tax-exempt security in 1929, obtained therefrom the equivalent of a taxable return of 5.26 percent under 1929 rates. Under the rates proposed by the Treasury this individual would derive as much benefit from his 4-percent tax-free bond as he would from a taxable security yielding 33⅓ percent (table 5).

5. *Holders of tax-exempt securities have enjoyed substantial windfalls during recent years.*—Because of the rise in tax rates, and also because of the decline in interest rates, most holders of tax-exempt securities have enjoyed substantial windfalls during recent years. The most common rates of interest on State and municipal bonds now outstanding are 4 to 4½ percent, whereas the present market yield of such

securities is generally below 2 percent (table 6 and chart 3). For 1941 the average coupon rate on all outstanding State and local government securities was just over 4 percent, while the Standard Statistics Co.'s index of municipal-bond yields for April 1942 was only 2.49 percent.

6. *Tax exemption results in inequitable taxation.*—Tax-exempt securities produce sharp inequalities in tax burdens. Persons with income from property are in a position to benefit most from this means of tax avoidance; persons who derive their incomes from earnings benefit least. Every increase in tax rates increases the importance of these inequalities.

The discrimination between individuals and between classes of individuals constitutes, from an equitable standpoint, the most fundamental of all the objections to tax-exempt securities. A survey of 25 actual returns for the taxable year 1940 reveals how striking are the differences in burden resulting from tax-exempt securities. If the rate schedule proposed by the Treasury were applied to the tax-exempt, as well as the taxable, income reported on these returns, the aggregate tax liability would be almost doubled—$21,400,000, instead of $12,500,000. Several of the cases summarized in table 7 are spectacular. In one case, out of a total reported income of approximately $974,600, no less than $668,700 came from State and local securities. The tax liability under the proposed rates would be $254,300, if the tax-exemption privilege were retained, but $850,100 if the tax-exemption privilege were removed. In a second case, $817,400 out of a total income of $1,106,300 was in the form of State and local interest. The tax liability of $239,600 under proposed rates would be raised to $975,300 if the entire income were taxable.

7. *The premium paid for tax-exempt securities does not reflect the value of the tax exemption.*—The differences between taxes paid by recipients of taxable and tax-exempt income would be less inequitable if the holders of tax-exempt securities had paid a premium that reflected in full the value of the tax exemption. This is not the case. The price that is set upon the tax-exemption privilege in the open market differs substantially in most cases, and spectacularly in the extreme cases, from the value of the exemption privilege to the individual purchaser. The current market value of the tax-exemption feature of State and local securities is roughly, one-half of 1 percent. This means that an investor who purchases a municipal bond must content himself with a yield that is about one-half of 1 percent lower, before allowance for taxes, than the yield he could obtain from a corporate bond of comparable quality. But to an individual with a surtax net income of $150,000, under the rates proposed by the Treasury, the tax-exemption feature of the municipal bond is worth five times as much as he has to pay for it. A high grade 3-percent corporation bond purchased at par would yield him only three-tenths of 1 percent after income taxes, compared with the 2½ percent tax-free yield that he could get from a municipal bond of at least comparable quality. The investor pays a half percent. It would be worth his while to pay as much as 2.7 percent.

The value of the tax-exemption privilege varies with the size of individual incomes. To a person with an income below the personal exemption, a 3-percent tax-free security is worth no more than a taxable security of comparable cost. To a married man with no dependents, with a net income of $10,000, the same 3-percent tax-free security is equivalent, under the proposed rates, to a taxable issue yielding 4.84 percent. To a similar individual with a net income of $100,000, the 3-percent tax-free security is equivalent to a taxable security yielding 25 percent; and to an individual with a taxable income of half a million dollars, to a taxable security yielding 30 percent (table 3).

If the volume of State and local securities were so small that the whole amount available was purchased by individuals in the upper income brackets, the premium paid for these securities in the form of lower interest rates might reflect roughly the value of the tax exemption to the purchasers. However, the larger part of the outstanding securities was held by Federal and State trust funds, banks, insurance companies, and other corporations (table 1). Some of these institutional investors enjoy a tax-free status. To them the tax exemption feature has no value at all. Others are subject to effective rates of taxation much lower than the rates imposed on income received by individuals in the upper income brackets. Normally, the price paid for a privilege of this sort in the open market will reflect the importance of that privilege, not to the most urgent, but to the least urgent, of the actual buyers. That is to say, the premium paid for the tax-exempt security will reflect the importance of the exemption privilege to those among the buyers to whom the privilege is worth the least.

Purchases to avoid taxes are not the only factors affecting the yield of State and local securities. Some investors, because of legal requirements, their desire for greater safety, or ignorance of superior alternatives, purchase or retain State and local securities even at some sacrifice in interest rates and without any regard to the tax exemption. Many wealthy individuals do not choose their investments solely with an eye on net yields after taxes. They are also influenced by the desire to control particular business enterprises, and reluctance to alter radically the composition of large bequests or other large holdings, particularly when such an alternation would entail the liquidation of properties with poor markets.

The net balance of these factors has been such that wealthy individuals have consistently been able to purchase tax exemption at bargain prices. This fact is reflected in tables 8 and 9 and charts 4 and 5, which show the spread in yield between corporate and municipal bonds is small relative to possible tax benefits.

8. *The removal of the tax exemption will not reduce State and local sovereignty.*—The claim is frequently made that the removal of tax exemption would undermine State and local sovereignty. Some persons have argued as if the adoption of this proposal would give the Federal Government the power to levy special or discriminatory taxes upon any or all operations of State and local governments. Nothing could be further from the truth. The elimination of tax exemption would not give the Federal Government the right to tax State and local interest at rates any higher than apply to other forms of income. It would give the Federal Government no new powers over the operations of State and local governments.

The securities of local governments in Great Britain do not enjoy exemption from the income tax of the central government, nor do those of the local governments and provinces of Canada or Australia.

Further, in subjecting interest from State and local securities to the same tax laws that apply to other kinds of income, the Federal Government would only be doing what all of the 33 States imposing personal income taxes already do themselves with respect to the obligations of other States and the subdivisions thereof (table 10).

9. *Elimination of tax exemption would only moderately increase State and local interest costs.*—The removal of tax exemption is frequently opposed on the ground that it would greatly increase State and local interest costs. These fears appear to be exaggerated. Tax exemption is only one of the many influences affecting the market rate of interest for State and local securities. Some persons mistakenly ascribe the whole difference between corporate and municipal bond yields to the tax exemption privilege. But a large part of the difference is due to the superior quality or greater safety of State and local obligations. The differential in yield in favor of municipal bonds was greater in 1900, before the adoption of the Federal income tax, than it is today (table 9).

Although the precise effect of the tax-exemption privilege on the market interest rate is subject to some difference of opinion, the Treasury believes that it is somewhere between one-fourth and five-eighths of 1 percent. Hence, it is reasonable to suppose that the removal of the tax-exemption privilege would increase interest rates on new State and local issues by something less than one-half of 1 percent on the average.

The interest costs of outstanding obligations would not be affected unless and until the obligations were refunded by new issues. It will be 1970 before 90 percent of the outstanding State and local obligations have matured [8] (table 11).

If other interest rates remained at approximately their present levels, the refunding of outstanding tax-exempt obligations with taxable securities would not increase the interest costs of State and local governments in the vast majority of cases since the removal of the tax exemption would be more than offset by the drastic decline that has taken place in the general level of interest rates.

In recent years new and refunding State and local issues have averaged about $1,000,000,000 annually. If this volume should continue, the immediate effect of the elimination of the tax immunity would be an increase in State and local interest costs of about $5,000,000 during the first year. Eventually, the annual difference would reach about $100,000,000 if the debt of State and local governments remained at its recent level.

The net cost to State and local governments would be less than $100,000,000 since they would obtain increased revenues from the application of their income taxes to new Federal issues, if Congress consents to such taxation.

10. *Tax exemption should be appraised as a joint Federal, State, and local problem.*—The individual citizen is not only a citizen and taxpayer of his city and State; he is no less a citizen and taxpayer of his National Government. He is subject at one and the same time to

[8] The fact that new plus-refunding issues have been appearing at the rate of a billion a year must not be made the basis for the assumption that the entire outstanding debt will have been refunded in 20 years. A portion of the refunding issues merely replace securities which in themselves were refunding issues.

taxes imposed by all governments—Federal, State, and local. The additional burden imposed on the State and local governments must be balanced against the new revenue that would be derived from Federal taxation. The net burden on the taxpayers of the Nation as a whole will not be increased by the removal of the exemption privilege. Whereas the immediate difference in interest costs to State and local governments would be about $5,000,000 a year and the ultimate difference in the neighborhood of $100,000,000 a year, the Federal Government would, under the proposed rates for 1942, avoid an immediate annual loss in revenue of $275,000,000 and the possibility of even larger future losses in revenue. Finally, the taxpayers of the Nation as a whole would be benefited by the elimination of an important source of tax avoidance, and by a resulting increase in the equity with which the total tax load is distributed among our citizens.

II. THE LEGAL AND CONSTITUTIONAL ISSUES INVOLVED IN THE PROPOSAL OF THE TREASURY MARCH 3, 1942, TO ELIMINATE THE EXEMPTION OF INTEREST ON OBLIGATIONS OF STATES AND THEIR POLITICAL SUBDIVISIONS

The Congress possesses the power to levy a tax on incomes. Interest paid on State and municipal obligations clearly constitutes income. It would follow, therefore, that such interest is subject to the Federal income tax. Certainly there is no provision of the Constitution which prohibits the imposition of a Federal income tax upon the interest derived from State and municipal obligations. The only possible basis for questioning the constitutional validity of such a tax is therefore the assertion that the holders of such obligations are cloaked with an immunity that may be implied from the Constitution. In 1895 the Supreme Court in *Pollock* v. *Farmers Loan & Trust Co.* (157 U. S. 429; 158 U. S. 601) stated that such an immunity existed. But the foundations of this opinion have been so weakened by subsequent decisions that it cannot withstand a direct attack. With it falls the only barrier to the validity of a Federal income tax on the interest received by such bondholders.

A. The belief that the *Pollock* decision has no validity today rests upon these bases: First, it may be argued that the adoption of the sixteenth amendment to the Constitution affirmatively sanctioned taxation of the income from State obligations, through the express grant of power to the Congress "to lay and collect taxes on incomes, from whatever source derived."

Second, every other claim to private immunity from Federal income taxation, even those formerly recognized by the Court has now been rejected. The income derived by Government contractors from their contracts was denied immunity in *Metcalf & Eddy* v. *Mitchell* (269 U. S. 514 (1926)) and *James* v. *Dravo Contracting Co.* (302 U. S. 134 (1937)); the income derived by lessees of Government property from their leased property was denied immunity in *Helvering* v. *Mountain Producers Corporation* (303 U. S. 376 (1938)); the income derived by Federal judges from their salary was in effect denied immunity in *O'Malley* v. *Woodrough* (307 U. S. 277 (1939)). Most significant of all, State employees, who had enjoyed under *Collector* v. *Day* (11 Wall. 113 (1870)), an immunity from Federal income taxation antedating that given to the bondholder by the *Pollock case*, were held in

Graves v. *O'Keefe* (306 U. S. 466 (1939)) to be subject to Federal income taxation on their salaries. Like the State employee, the bondholder offers services, his capital, to the State at a price and like the employee that price must pay its contribution to the Federal revenues.

Third, the theoretical basis of the *Pollock* decision, that a tax on the income from State obligations is equivalent to a tax on the bonds themselves and thus is a tax on the power of the State to borrow money, has been flatly rejected by the Supreme Court. In *Graves* v. *O'Keefe*, Justice Stone said: "The theory, which once won a qualified approval, that a tax on income is legally or economically a tax on its source, is no longer tenable." In place of that discarded theory there has been substituted by the Supreme Court the view that a nondiscriminatory Federal income tax, directed at all citizens alike, is valid as against any claim to constitutional immunity based upon dealings with State governments. That the economic burden of a State sales tax upon materials sold to a cost-plus-a-fixed-fee contractor with the Federal Government "is but a normal incident of the organization within the same territory of two independent taxing sovereignties" was recently announced in *Alabama* v. *King & Boozer* (314 U. S. 1 (1941)). From this case it would follow that any burden that may be passed on economically to State governments because of a tax upon the interest derived from bonds issued by such governments is but the normal incident of the existence of two governments within the same territory. Such an indirect and incidental effect does not warrant a restriction of the Federal taxing power.

Fourth, great emphasis is placed by the Supreme Court in its recent opinions on the duty of all individuals to contribute their share to the costs of Government. Equally stressed is the recognition of the dangers inherent in placing restrictions upon the Federal taxing power. The Court has thus clearly recognized that recognition of any immunity on the part of the holders of State obligations would relieve one group of taxpayers from the duty of financial support to the National Government and curtail the sovereign power of that government to maintain its existence. When the issue is so viewed, the urgency of our present needs for revenue, greater than ever before, compels the conviction that the Supreme Court will refuse to exempt the holders of State bonds from their obligations to the Nation.

B. Some individuals have asserted that while the Federal Government may possess the power to tax the interest on future issues of State and municipal obligations, such power does not extend to the interest on the outstanding obligations. They support this assertion by claiming that a contract of exemption exists between the Federal Government and the holders of such otustanding obligations.

However, no such contract exists. Although the various revenue acts have excluded from gross income the interest upon such obligations, the exemption provisions in these acts cannot be regarded as contracts between the Federal Government and the States or the bondholders. This exemption, like any other exemption, is simply an expression of legislative policy which may be changed at any time. If such a provision were said to be a contract, on like grounds a salaried taxpayer might claim he had a binding contract right to the earned income credit, a father to the credit for dependent children and so on. In short, to these taxpayers, and to the taxpayer who possesses State and local obligations, the Federal Government has made no promises that existing laws would not be changed.

But, it has been asserted, while no contract exists, at least there is a moral obligation upon the Federal Government not to tax such interest in view of the exemption existing at the time of their issuance. But here again the granting of an exemption does not carry with it the understanding that it will be forever continued. No doubt many investors expected a continued tax-free yield when they purchased the obligations. But it has been pointed out previously that such expectation did not extend to the high rates necessitated by emergency conditions. And every taxpayer takes the chance that the rates of tax and the exemptions thereunder will change. Any other view of the situation would turn the tax laws into static rules and by thus straitjacketing revenue legislation make it impossible for the Congress to adapt its tax policies to changing conditions.

C. Finally, it has been contended that the history of the ratification of the sixteenth amendment proves that at that time it was the understanding that the words "from whatever source derived" did not give to the Congress the power to levy a tax upon interest from State and local obligations. The communications and speeches of Senator Borah, of Idaho, and Root, of New York, have been cited in an effort to show that Congress did not intend to tax the interest on State and municipal obligations. It should be noted that this issue was not raised until after the amendment had been submitted to the States for ratification. In fact, there is nothing that was said in the course of the debate in the Congress from which it may be inferred that a single Member expected or intended that the income from State and municipal bonds and the salaries of State and municipal officers and employees should be constitutionally immune under the proposed amendment.

When the sixteenth amendment was before the New York State Legislature for ratification Governor Hughes recommended its rejection on the ground that the amendment gave to the Federal Government the right to tax the interest on State and municipal securities. Senator Root took the position that the amendment merely dealt with the problem of apportionment and did not affect the inherent power of the Federal Government to tax incomes. In other words, the sixteenth amendment simply permitted Congress to levy an income tax without apportionment among the several States, and that therefore the amendment did not give to the Congress any power that it did not previously have, so that the rule of the *Pollock case* was unaffected by its passage. This was also Senator Borah's position. While the New York Legislature rejected the amendment on Governor Hughes' advice, it was ratified by that State after his departure from office. It is thus apparent that at the time of the ratification of the sixteenth amendment by the several States there was reputable authority on both sides of the question with respect to the taxability of interest upon State and local obligations.

There is, however, a stronger answer to this contention. As indicated above, the observations of Senators Borah and Root amount to the assertion that the *Pollock case* was unaffected by the adoption

of the sixteenth amendment. But the rule of the *Pollock case* has since been rejected by the Supreme Court, so that there is no immunity afforded by the Constitution to the interest on these obligations. In this light the references to the sixteenth amendment become wholly irrelevant.

TABLE 1.—*Tax-exempt State and local securities, by classes of holder, June 30, 1941* [1]

[In billions of dollars]

Class of holder:		Estimated amounts at par value
Individuals [2]		7.8
Commercial banks		3.7
Insurance companies		2.1
Corporations other than banks and insurance companies		.5
Tax-exempt holders:		
Federal funds	.7	
State and local government funds [3]	4.1	
Mutual savings banks	.5	
Other tax-exempt institutions	.6	
All tax-exempt holders		5.9
All holders		20.0

[1] Including securities of Territories and insular possessions.
[2] Including estates and trusts.
[3] Including trust, investment, and sinking funds, and holdings of Territorial and insular governmental funds.

Source: Treasury Bulletin, February 1942, and Annual Report of the Secretary of the Treasury, 1941.

TABLE 2.—*State and local government securities as a percent of gross estate,*[1] *by size classes of net estate, estate-tax returns filed in 1928–40*

Filing year	Net estate [2] (in thousands of dollars)				
	100 under 200	200 under 300	300 under 500	500 under 1,100 [3]	1,100 and over
	Percent	*Percent*	*Percent*	*Percent*	*Percent*
1928	1.8	2.2	2.7	4.2	6.2
1929	1.6	1.6	2.2	4.5	6.0
1930	1.4	2.4	3.0	3.6	7.3
1931	1.9	2.6	4.2	4.8	9.2
1932	2.3	2.6	5.6	6.9	12.3
1933	2.9	3.1	6.6	11.3	21.9
1934	2.4	4.4	5.8	10.0	22.9
1935	3.0	5.7	6.7	11.0	14.4
1936	3.0	5.4	6.8	9.2	12.0
1937	3.1	5.3	6.7	9.2	11.4
1938	2.9	4.4	5.9	8.0	10.1
1939	3.2	4.4	7.1	11.6	22.7
1940	3.1	3.6	6.2	8.5	15.1

[1] Gross estate includes tax-exempt insurance.
[2] Before specific exemption.
[3] Includes securities of Territories and insular possessions.

Source: Compiled from Statistics of Income.

TABLE 3.—*Gross annual yields from a taxable security equivalent to specified yields from a wholly tax-exempt security* [1]

Net income from other sources [2]	Gross annual yield from a taxable security equivalent to a tax-exempt yield of—							
	2½ percent		3 percent		3½ percent		4 percent	
	1941 rates	Proposed rates [3]	1941 rates	Proposed rates [3]	1941 rates	Proposed rates [3]	1941 rates	Proposed rates [3]
$1,000	2.50	2.50	3.00	3.00	3.50	3.50	4.00	4.00
$2,000	2.77	3.21	3.32	3.85	3.87	4.49	4.42	5.13
$5,000	2.87	3.47	3.45	4.17	4.02	4.86	4.60	5.56
$10,000	3.33	4.03	4.00	4.84	4.67	5.65	5.33	6.45
$20,000	4.31	5.56	5.17	6.67	6.03	7.78	6.90	8.89
$50,000	6.10	10.42	7.32	12.50	8.54	14.58	9.76	16.67
$100,000	7.81	20.83	9.38	25.00	10.94	29.17	12.50	33.33
$500,000	10.42	25.00	12.50	30.00	14.58	35.00	16.67	40.00
$1,000,000	11.36	25.00	13.64	30.00	15.91	35.00	18.18	40.00

[1] It is assumed that both the taxable and the tax-exempt security are bought at par; and that the income from additional investments, if taxable, would not be large enough to become subject to a higher rate than that applicable to the first dollar of the additional income. The calculations apply to a married person with no dependents, and take into account variations in the personal exemption and earned income credit as well as in tax rates. The earned income credit is assumed to be unaffected by the additional taxable income except in those cases where by statutory definition all net income is deemed earned.
[2] Before personal exemption.
[3] As presented by Secretary Morgenthau to the Ways and Means Committee, Mar. 3, 1942.

TABLE 4.—*State and local government securities, by length of time outstanding* [1]

June 30, 1941

[In billions of dollars]

Length of time outstanding:	*Estimated amount*
Less than 1 year	2.3
Less than 2 years	3.1
Less than 3 years	4.2
Less than 4 years	4.9
Less than 5 years	5.6
Less than 6 years	6.5
Less than 7 years	7.3
Less than 8 years	7.9
Less than 9 years	8.4
Less than 10 years	9.3
Total amount outstanding	20.0

[1] Interest-bearing securities only, including those of Territories and insular possessions.
Source: Compiled from data supplied by the Bureau of the Census, Division of State and Local Government.

TABLE 5.—*Gross annual yield from a taxable security equivalent to a 4-percent yield from a wholly tax-exempt security, under tax rates in effect in 1929, 1935, and 1941, and proposed for 1942* [1]

Net income from other sources [2]	1929	1935	1941	1942 (proposed rates [3])
	Percent	*Percent*	*Percent*	*Percent*
$1,000	4.00	4.00	4.00	4.00
$2,500	4.00	4.00	4.42	5.13
$5,000	4.02	4.17	4.60	5.56
$10,000	4.12	4.37	5.33	6.45
$20,000	4.40	4.71	6.90	8.89
$50,000	4.82	5.80	9.76	16.67
$100,000	5.26	6.70	12.50	33.33
$500,000	5.26	10.00	16.67	40.00
$1,000,000	5.26	10.63	18.18	40.00

[1] It is assumed that both the taxable and the tax-exempt security are bought at par; and that the income from additional investments, if taxable, would not be large enough to become subject to a higher rate than that applicable to the first dollar of the additional income. The calculations apply to a married person with no dependents, and take into account variations in the personal exemption and earned income credit as well as in tax rates. The earned income credit is assumed to be unaffected by the additional taxable income except in those cases where by statutory definition all net income is deemed earned.
[2] Before personal exemption.
[3] As presented by Secretary Morgenthau to the Ways and Means Committee, Mar. 3, 1942.

TABLE 6.—*Securities of States, and of cities with more than 100,000 population, by interest rate, 1939* [1]

[Amounts in thousands of dollars]

Interest rate (percent)	Securities outstanding, at par value					
	States, and cities over 100,000 population		States		Cities over 100,000 population	
	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total
1.50	$75,990	0.8	$75,990	2.4		
1.75	43,388	.4	43,388	1.4		
2	131,814	1.3	65,153	2.1	$66,661	1.0
2.25	232,516	2.4	140,570	4.4	91,946	1.4
2.50	149,179	1.5	50,189	1.6	98,990	1.5
2.75	177,907	1.8	72,600	2.3	105,307	1.6
3	718,118	7.3	260,121	8.2	457,997	6.9
3.25	402,411	4.1	136,859	4.3	265,552	4.0
3.50	848,107	8.6	196,661	6.2	651,446	9.8
3.75	230,617	2.4	117,463	3.7	113,154	1.7
4	2,267,296	23.1	782,670	24.7	1,484,626	22.3
4.25	1,580,960	16.1	349,760	11.0	1,231,200	18.5
4.50	1,730,470	17.6	435,566	13.7	1,294,904	19.5
4.75	294,902	3.0	124,284	3.9	170,618	2.6
5	706,708	7.2	227,636	7.2	479,072	7.2
5.25	15,809	.2			15,809	.2
5.50	81,962	.8			81,962	1.2
5.75	14,784	.2			14,784	.2
6	120,571	1.2	52,328	1.6	68,243	1.0
Total	9,819,812	100.0	3,170,146	100.0	6,649,666	100.0
Other rates	1,099,479		180,790		919,661	
Rates not reported	8,099		1,187		6,912	

[1] Securities outstanding at close of fiscal years ended in 1939. Debt with original maturity of less than 1 year is not included.

Source: Bureau of the Census, Division of State and Local Government.

TABLE 7.—*Tax liability assuming interest from State and local government securities, (a) tax exempt and (b) taxable, under present and proposed individual income-tax rates, for 25 selected individuals*

[In thousands of dollars]

Case	State and local interest	Taxable net income from other sources [1]	Total income	Present rates: Tax liability: Interest exempt	Present rates: Tax liability: Interest taxable	Present rates: Revenue loss from tax exemption	Proposed rates [2]: Tax liability: Interest exempt	Proposed rates [2]: Tax liability: Interest taxable	Proposed rates [2]: Revenue loss from tax exemption
1	321.6	601.9	923.5	424.2	595.7	171.5	531.4	721.0	189.6
2	146.2	297.9	444.1	126.4	301.2	174.8	164.6	377.2	212.6
3	260.4	148.9	409.3	87.0	276.8	189.8	113.6	348.0	234.4
4	230.9	1,337.5	1,568.4	999.2	1,181.6	182.4	1,182.7	1,390.5	207.8
5	226.0	1,081.9	1,307.9	796.6	975.8	179.2	951.0	1,155.1	204.1
6	215.0	147.8	362.8	83.8	241.8	158.0	110.2	303.7	193.5
7	349.4	144.3	493.7	82.6	339.6	257.0	107.8	422.4	314.6
8	820.7	835.6	1,656.3	605.0	1,251.6	646.6	731.7	1,470.3	738.6
9	162.7	249.8	412.5	158.1	279.2	121.1	204.4	350.9	146.5
10	351.7	275.1	626.8	173.9	442.7	268.8	228.5	545.0	316.5
11	330.7	373.6	704.3	249.9	503.0	253.1	315.8	613.5	297.7
12	773.0	765.1	1,538.1	549.4	1,157.7	608.3	667.6	1,363.2	695.6
13	668.7	305.9	974.6	198.6	712.8	514.2	254.9	856.1	601.2
14	817.4	288.9	1,106.3	186.6	817.2	630.6	232.6	973.3	740.7
15	394.6	376.6	771.2	250.7	553.2	302.5	316.8	672.0	355.2
16	296.5	603.0	899.5	423.2	652.0	228.8	520.2	787.0	266.8
17	404.3	180.1	584.4	94.8	394.3	299.5	121.7	487.6	365.9
18	316.3	915.1	1,231.4	666.8	915.8	249.0	803.1	1,087.5	284.4
19	313.4	278.7	592.1	179.2	416.6	237.4	230.4	512.6	282.2
20	356.5	135.4	491.9	75.1	336.9	261.8	98.9	419.7	320.8
21	1,083.7	4,321.4	5,405.1	3,280.3	4,251.3	971.0	3,868.8	4,844.2	975.4
22	172.6	170.7	343.3	102.2	237.2	135.0	133.2	288.6	155.4
23	226.2	166.9	393.1	99.6	264.6	165.0	129.8	333.4	203.6
24	314.8	331.7	646.5	217.3	457.3	240.0	276.9	560.1	283.2
25	424.8	218.9	643.7	136.2	366.3	230.1	176.5	558.9	382.4
Total	9,969.4	14,441.7	24,411.1	10,348.8	17,914.1	7,565.3	12,470.5	21,442.9	8,972.4

[1] Exclusive of net long-term capital gains and losses.
[2] As presented by Secretary Morgenthau to the Ways and Means Committee, Mar. 3, 1942.

Source: Income items from returns on Form 1040 for 1940.

TABLE 8.—*Comparison of the yields of high-grade corporate and municipal bonds*

Month	Yield on first day of month: High-grade corporate bonds [1]	Yield on first day of month: High-grade municipal bonds [2]	Spread	Month	Yield on first day of month: High-grade corporate bonds [1]	Yield on first day of month: High-grade municipal bonds [2]	Spread
1939:				1940—Continued.			
January	3.01	2.36	0.65	October	2.69	2.01	0.68
February	2.94	2.33	.61	November	2.70	1.94	.76
March	2.86	2.38	.48	December	2.61	1.82	.79
April	2.93	2.32	.61	1941:			
May	2.90	2.37	.53	January	2.57	1.80	.77
June	2.82	2.26	.56	February	2.61	1.97	.64
July	2.78	2.26	.52	March	2.70	2.01	.69
August	2.74	2.27	.47	April	2.73	2.03	.70
September	2.98	2.79	.19	May	2.75	1.92	.83
October	3.28	2.94	.34	June	2.74	1.77	.97
November	3.00	2.55	.45	July	2.65	1.69	.96
December	2.90	2.35	.55	August	2.64	1.70	.94
1940:				September	2.65	1.71	.94
January	2.83	2.24	.59	October	2.62	1.65	.97
February	2.83	2.28	.55	November	2.58	1.57	1.01
March	2.80	2.35	.45	December	2.59	1.60	.99
April	2.73	2.27	.46	1942:			
May	2.74	2.21	.53	January	2.71	1.91	.80
June	2.99	2.66	.33	February	2.80	2.04	.76
July	2.88	2.34	.54	March	2.81	2.19	.62
August	2.82	2.17	.65	April	2.77	2.06	.71
September	2.78	2.17	.61				

[1] Treasury Department average of high-grade corporate bonds.
[2] Bond Buyer average, 11 first grade bonds.

TABLE 9.—*Yields of corporate and municipal bonds, spread, and Federal individual income tax rates, 1900–42*

Year	Annual average yield: High-grade corporate bonds [1]	Annual average yield: Municipal bonds [2]	Spread	Tax rate on bracket immediately above $100,000	Year	Average annual yield: High-grade corporate bonds [1]	Average annual yield: Municipal bonds [2]	Spread	Tax rate on bracket immediately above $100,000
1900	4.05	3.12	0.93	0	1922	5.10	4.23	0.87	56
1901	3.90	3.13	.77	0	1923	5.12	4.25	.87	43
1902	3.86	3.21	.65	0	1924	5.00	4.20	.80	43
1903	4.07	3.38	.69	0	1925	4.88	4.09	.79	25
1904	4.03	3.45	.58	0	1926	4.73	4.08	.65	25
1905	3.89	3.40	.49	0	1927	4.57	3.98	.59	25
1906	3.99	3.57	.42	0	1928	4.55	4.05	.50	25
1907	4.27	3.86	.41	0	1929	4.73	4.27	.46	24
1908	4.22	3.93	.29	0	1930	4.55	4.07	.48	25
1909	4.06	3.78	.28	0	1931	4.58	4.01	.57	25
1910	4.16	3.97	.19	0	1932	5.01	4.65	.36	56
1911	4.17	3.98	.19	0	1933	4.49	4.71	−.22	56
1912	4.21	4.02	.19	0	1934	4.00	4.03	−.03	56
1913	4.42	4.22	.20	5	1935	3.60	3.41	.19	56
1914	4.46	4.12	.34	5	1936	3.24	3.07	.17	62
1915	4.64	4.16	.48	5	1937	3.26	3.10	.16	62
1916	4.49	3.94	.55	7	1938	3.19	2.91	.28	62
1917	4.79	4.20	.59	31	1939	3.01	2.76	.25	62
1918	5.20	4.50	.70	64	1940	2.84	2.50	.34	66
1919	[3] 5.49	4.46	[3] 1.03	60	1941	2.77	2.10	.67	69
1920	6.12	4.98	1.14	60	1942 [4]	2.84	2.49	.35	....
1921	5.97	5.09	.88	60					

[1] From 1900 through 1918, Standard Statistics Co. average for 15 high-grade railroad bonds; other years Moody's Investors Service average for high-grade corporate (Aaa) bonds.
[2] Standard Statistics Co. average.
[3] Standard Statistics Co. average of yields of high-grade railroad bonds was 5.29 percent for 1919, and the spread based upon this average was 0.83 percent.
[4] Apr. 1, 1942.

TABLE 10.—*Treatment of interest from Federal, State, and local government obligations under State individual income taxes, as of January 1, 1942*

State	Interests from obligations of the—: Home States	Other States	Political subdivisions of the: Home States	Political subdivisions of the: Other States	Federal Government and its agencies
Alabama	Exempt	Taxed	Exempt	Taxed	Exempt
Arizona	Exempt	Taxed	Exempt	Taxed	Exempt
Arkansas	Exempt	Taxed	Exempt	Taxed	Exempt
California	Exempt	Taxed	Exempt	Taxed	Exempt
Colorado	Taxed	Taxed	Taxed	Taxed	Exempt
Delaware	Exempt	Taxed	Exempt	Taxed	Exempt
Georgia	Exempt	Taxed	Exempt	Taxed	Exempt
Idaho	Taxed	Taxed	Exempt	Taxed	Exempt
Iowa	Taxed	Taxed	Taxed	Taxed	Exempt
Kansas	Taxed	Taxed	Taxed	Taxed	Exempt
Kentucky	Exempt	Taxed	Taxed	Taxed	Exempt
Louisiana	Exempt	Taxed	Exempt	Taxed	Exempt
Maryland	Exempt	Taxed	Exempt	Taxed	Exempt
Massachusetts	Exempt	Taxed	Exempt	Taxed	Exempt
Minnesota	Exempt	Taxed	Exempt	Taxed	Exempt
Mississippi	Exempt	Taxed	Exempt	Taxed	Exempt
Missouri	Exempt	Taxed	Exempt	Taxed	Exempt
Montana	Taxed	Taxed	Exempt	Taxed	Exempt
New Hampshire	Exempt	Taxed	Taxed	Taxed	Exempt
New Mexico	Exempt	Taxed	Taxed	Taxed	Exempt
New York	Exempt	Taxed	Exempt	Taxed	Exempt
North Carolina	Exempt	Taxed	Exempt	Taxed	Exempt
North Dakota	Exempt	Taxed	Exempt	Taxed	Exempt
Oklahoma	Taxed	Taxed	Taxed	Taxed	Exempt

See footnotes at end of table.

TABLE 10.—*Treatment of interest from Federal, State, and local government obligations under State individual income taxes, as of January 1, 1942*—Con.

State	Interests from obligations of the—				
	Home States	Other States	Political subdivisions of the— Home States	Political subdivisions of the— Other States	Federal Government and its agencies
Oregon	Taxed	Taxed	Taxed	Taxed	Exempt.[1]
South Carolina	Exempt	Taxed	Exempt	Taxed	Exempt.
South Dakota	Taxed[11]	Taxed	Taxed	Taxed	Exempt.[4]
Utah	Exempt	Taxed	Taxed	Taxed	Exempt.[1]
Vermont	Exempt[11]	Taxed	Exempt[12]	Taxed	Exempt.
Virginia	Exempt	Taxed	Taxed	Taxed	Exempt.
West Virginia	Exempt	Taxed	Exempt	Taxed	Exempt.
Wisconsin	Taxed	Taxed	Taxed	Taxed	Exempt.[1]

[1] Recent legislation (1939 to 1942) provides that interest from obligations of the United States shall be included in gross income insofar as the State is constitutionally or legally authorized to tax such income.
[2] Exemption is restricted to interest from bonds.
[3] Exempt by regulation.
[4] Restricted to bonds issued after 1902.
[5] Excludes from gross income all income which the State is prohibited from taxing under the Constitution or laws of the United States.
[6] Recent legislation (1939 to 1942) repealed the section which excluded from gross income the interest upon obligations of the United States.
[7] Restricted to post-1908 State and post-1908 local issues marked "tax-exempt."
[8] No specific exemption in statute or regulation.
[9] Applicable to post-1923 issues.
[10] Exemption is conditional upon interest upon obligations of the State of North Carolina or of its political subdivisions being exempt from United States income taxes.
[11] Interest on soldiers' compensation bonds and on rural credit bonds issued prior to July 1, 1937, is exempt.
[12] Exempt when the rate of interest does not exceed 5 percent per annum.

TABLE 11.—*Estimated maturities of State and local government securities outstanding June 30, 1941*[1]

[Amounts in millions of dollars]

Date of maturity, fiscal years ended June 30	Yearly maturities[2]		Cumulative maturities	
	Amount	Percent of total	Amount	Percent of total
1942	[3] 2,021	10.2	2,021	10.2
1943	905	4.6	2,926	14.8
1944	904	4.6	3,830	19.4
1945	849	4.3	4,679	23.7
1946	725	3.6	5,404	27.3
1947	737	3.7	6,141	31.0
1948	651	3.3	6,792	34.3
1949	673	3.4	7,465	37.7
1950	682	3.4	8,147	41.1
1951-55	3,396	17.1	11,543	58.2
1956-60	2,779	14.0	14,322	72.2
1961-65	2,267	11.4	16,589	83.6
1966-70	1,136	5.7	17,727	89.3
1971-75	696	3.5	18,413	92.8
1976-80	1,234	6.2	19,648	98.8
1981-85	182	.9	19,830	99.8
1986-90	29	.1	19,859	100.0
1991-95	1	(4)	19,900	100.0
Total	19,900	100.0		

[1] Excluding securities of Territories and insular possessions.
[2] By maturity dates, without reference to optional earlier call dates.
[3] Includes $1,144,000,000 short-term interest-bearing securities.
[4] Less than 0.05 percent.

Source: Bureau of the Census, Division of State and Local Government.

Chart 2

PERCENTAGE OF ESTATES IN STATE AND LOCAL SECURITIES

Estate Tax Returns Filed, 1928–1940

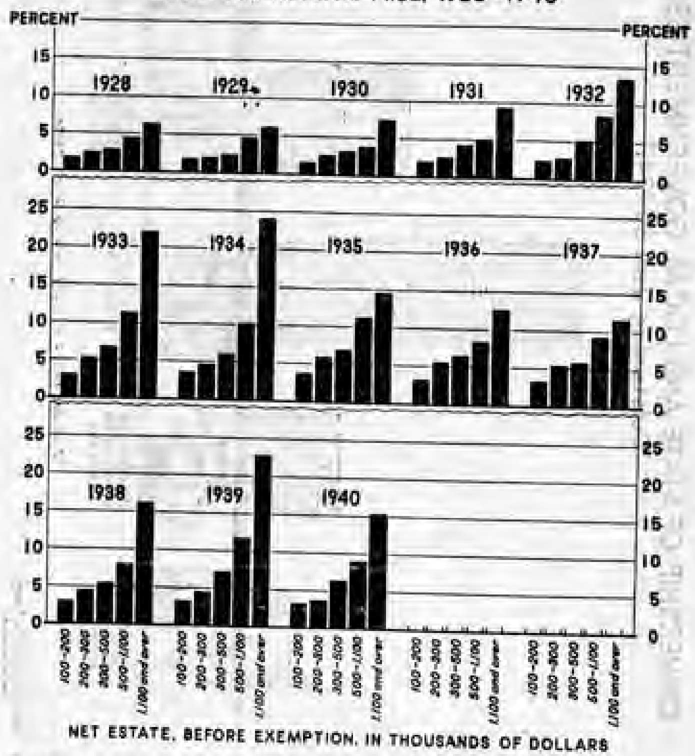


Chart 3

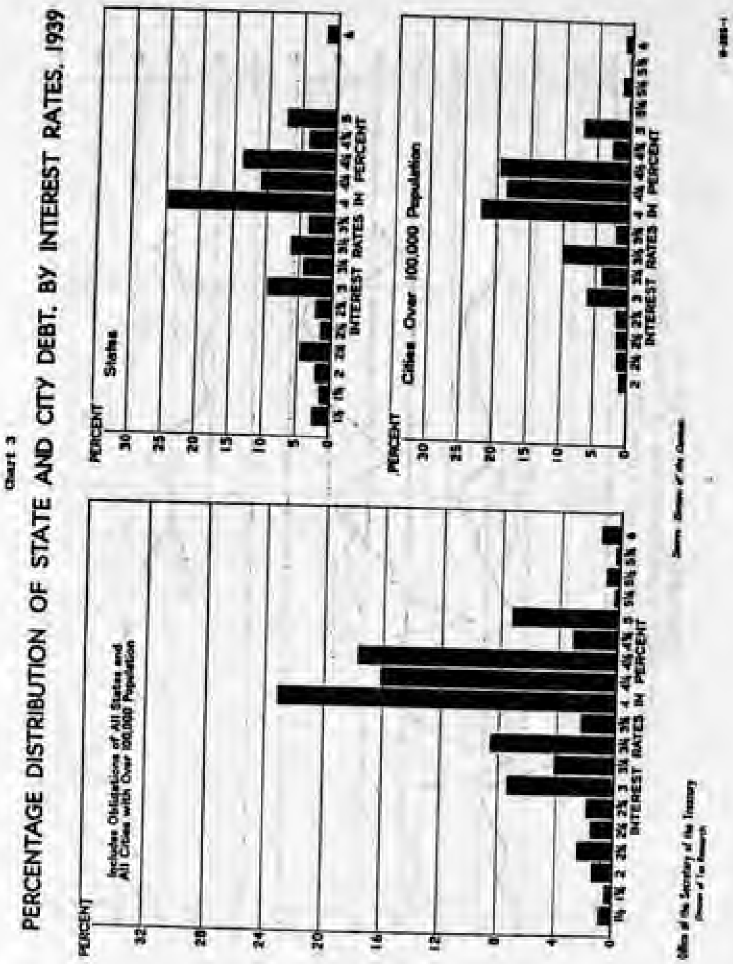


Chart 4

COMPARISON OF THE YIELDS OF HIGH-GRADE CORPORATE AND MUNICIPAL BONDS

First Day of the Month Figures, 1939 to Date

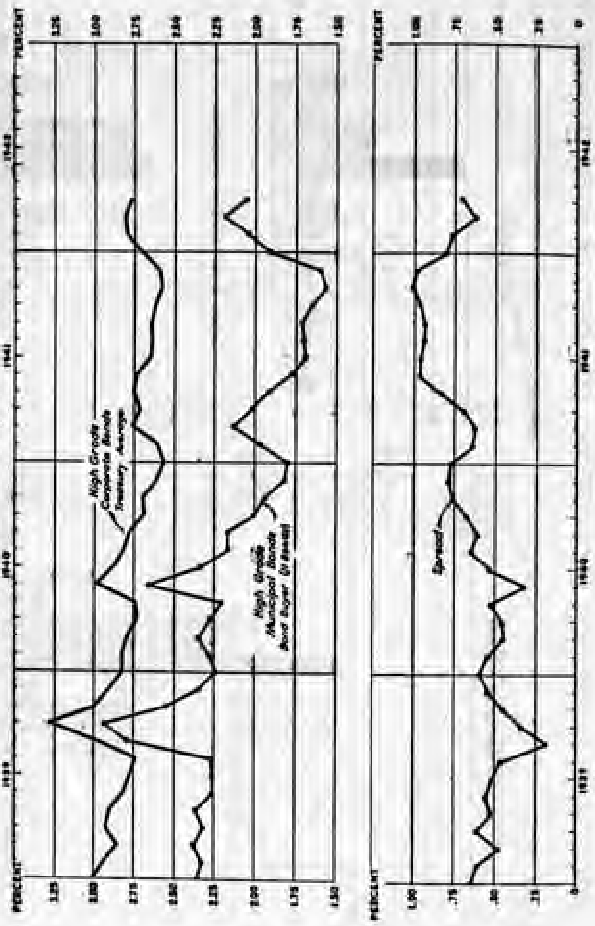
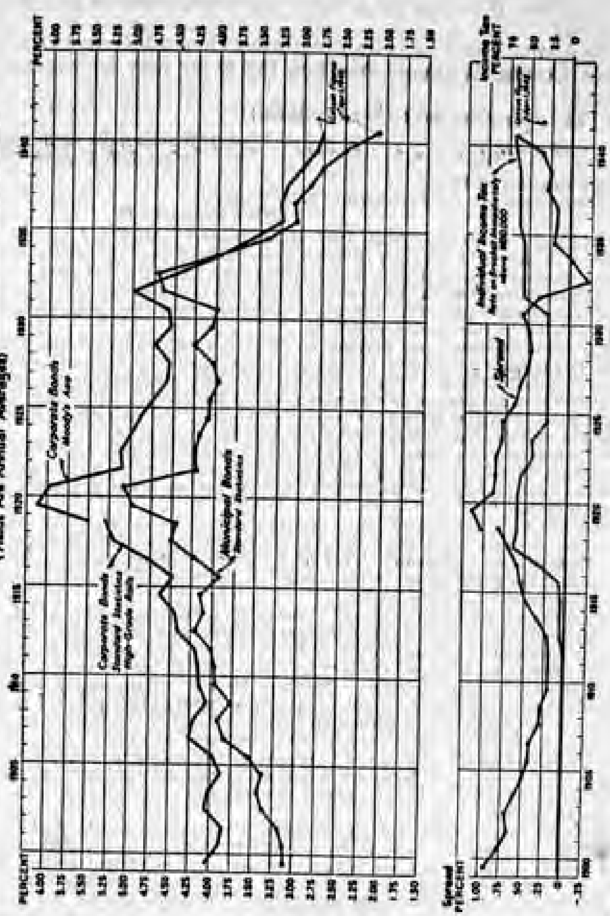


Chart 5

COMPARISON OF THE SPREAD IN YIELD BETWEEN CORPORATE AND MUNICIPAL BONDS WITH THE FEDERAL INDIVIDUAL INCOME TAX, 1900-'42

(Yields Are Annual Averages)



Mr. PAUL. Mr. Chairman, I would like to insert in the record an opinion dated April 14, 1942, addressed to me and signed by the Assistant Attorney General of the United States with respect to the constitutionality of imposing an income tax on the interest from State and municipal obligations.

Mr. REED. Who was the Assistant Attorney General who wrote that opinion?

Mr. PAUL. That is Assistant Attorney General Samuel O. Clark, Jr.

Mr. COOPER. Without objection, the letter may be inserted in the record.

(The letter referred to is as follows:)

DEPARTMENT OF JUSTICE,
Washington, April 14, 1942.

Hon. RANDOLPH E. PAUL,
Tax Adviser to the Secretary of the Treasury,
Washington, D. C.

DEAR MR. PAUL: On June 24, 1938, Hon. James W. Morris, Assistant Attorney General in charge of the Tax Division of the Department of Justice, transmitted to the Honorable Herman Oliphant, General Counsel of the Treasury Department, a comprehensive study of the constitutional aspects of the taxation of Government bondholders and employees. Copies of this study were also made available to the appropriate congressional committees.

You have requested our opinion on the constitutionality of the proposal by your Department to subject to Federal income tax the interest received hereafter on outstanding and future issues of State and municipal bonds, with special emphasis on legal developments subsequent to the publication of our study. We are pleased to comply with your request and submit the following views.

In our earlier study we expressed the following conclusion:

"It is believed that there can no longer be found in the decisions of the Supreme Court and rule of continuing authority which would raise a constitutional prohibition against applying the Federal income tax to State bondholders, officers, and employees."

You are no doubt aware that since that time the decisions of the Supreme Court on the question of constitutional tax immunity have all served to reinforce and confirm that conclusion. The trend toward a limitation of such immunity, which had developed when we published our study in 1938, has continued without interruption to the present date.

We are, of course, no longer concerned with the power of the Federal Government to tax the income of State officers and employees. The decision of the Supreme Court in *Graves* v. *N. Y. ex rel. O'Keefe* (306 U. S. 466), and the enactment of the Public Salary Tax Act of 1939, have removed that problem from the field of controversy. Taxation by both State and Federal Governments of the salaries of public employees is now an accepted incident of our fiscal system. The only remaining question is whether the income received from State and municipal obligations may be subjected to Federal taxation. In our view, the answer is as clear and certain as the solution of any legal problem can ever be prior to a final determination of the precise issue by the Supreme Court. It is our considered opinion that the Congress does have the power to tax such income.

It is, of course, true that the Supreme Court concluded in *Pollock* v. *Farmers' Loan & Trust Co.* (157 U. S. 429, 158 U. S. 601), that a Federal tax could not validly be imposed upon income derived from municipal obligations. That decision was based upon the theory that a tax on income was a tax upon the source from which the income was derived. Thus, a tax on the income from municipal bonds was the equivalent of a tax upon the bonds themselves, and, therefore, an unconstitutional burden upon the power to borrow. However, this reasoning has been completely discredited in later opinions of the Supreme Court. With the destruction of the premise of the *Pollock case*, its conclusion must also fall.

"The theory, which once won a qualified approval, that a tax on income is legally or economically a tax on its source, is no longer tenable * * *," said the Supreme Court in March 1939, in *Graves* v. *N. Y. ex rel. O'Keefe* (306 U. S. 466). Less than a year earlier in *Helvering* v. *Gerhardt* (304 U. S. 405), the Court

had sustained a Federal tax upon the salaries received by employees of the Port of New York Authority. The claimed immunity, if allowed, would in the Court's opinion (p. 424) have imposed "to an inadmissible extent a restriction upon the taxing power which the Constitution has granted to the Federal Government." The imposition of a State tax upon the salary of a Federal employee was similarly held in the *O'Keefe case* not to place an unconstitutional burden upon the employing sovereign. *Collector* v. *Day* (11 Wall. 113), another landmark decision like the *Pollock case*, was thus overruled. The express denial in the *O'Keefe case* that a tax on income was the equivalent of a tax upon the source represented no new thought but was rather a reiteration of a principle which had been applied in the Court's prior decision in *New York ex rel. Cohn* v. *Graves* (300 U. S. 308), and in *Hale* v. *State Board* (302 U. S. 95). There, too, it had been recognized that "income is not necessarily clothed with the tax immunity enjoyed by its source."

The opponents of the pending proposal urge that it would produce an unconstitutional "interference" with State governments. Translated into practical terms, the interference complained of is merely the increased cost of future public borrowing which might be occasioned by the tax. It is significant that this increased cost involves no discriminatory burden. Rather, it represents the effect of placing income from private and public sources upon the same plane of equality. The absence of any element of discrimination would be helpful in sustaining the constitutionality of the proposed tax.

Until the Supreme Court handed down its decision in *Alabama* v. *King & Boozer* on November 10, 1941 (314 U. S. 1), there was room for the view that, despite the decisions affecting public employees, a constitutional immunity from taxation might possibly be accorded to Government bondholders. Mr. Justice Stone had stated in the *O'Keefe* opinion, p. 486, that there was no basis "for the assumption that any * * * tangible or certain economic burden is imposed on the government concerned as would justify" a decision that the tax upon the employee's salary was invalid. On the other hand, it is no doubt true that the issuing government would bear a part of the economic burden of an income tax imposed upon the bondholder. Nevertheless, this Department did not attach to the statement of Mr. Justice Stone the significance urged for it by those who have opposed the legislation now suggested. The recent decision in *Alabama* v. *King & Boozer* confirms our view. It is now clearly established that the validity of a tax upon bond interest will not be affected by the increased likelihood that the economic burden will in some measure be passed on to the Government.

The question in the *Alabama* case was whether an Alabama sales tax, which was to be collected from the buyer, was unconstitutional in its application to purchases made by a contractor engaged by the United States under a cost-plus-a-fixed-fee contract. It was quite clear, of course, that the entire burden of the tax would be borne by the Government. In fact, the Government had agreed with the contractor that State taxes, if valid, would constitute part of the cost of the project and would be assumed and borne by the Government. Hence there was no uncertainty as to the economic effect of the tax as in the earlier case of *James* v. *Dravo Contracting Co.* (302 U. S. 134), which involved a lump sum contract. The Supreme Court nevertheless sustained the State exaction. In the course of its opinion the Court made the following observation (pp. 8-9):

"So far as such a nondiscriminatory State tax upon the contractor enters into the cost of the materials to the Government, that is but a normal incident of the organization within the same territory of two independent taxing sovereignties. The asserted right of the one to be free of taxation by the other does not spell immunity from paying the added costs, attributable to the taxation of those who furnish supplies to the Government and who have been granted no tax immunity."

Thus, the Supreme Court finally laid to rest the theory that an economic burden in terms of increased governmental costs invalidates a tax. The earlier opinions in *Panhandle Oil Co.* v. *Knox* (277 U. S. 218), and *Graves* v. *Texas Co.* (298 U. S. 393), were held untenable so far as they supported the contrary conclusion.

A decision which supports State taxation of Federal cost-plus-a-fixed-fee contractors would operate at least equally to sustain a Federal tax imposed upon State bondholders. Both relationships rest upon contract; one involves the furnishing of supplies and services, the other money. The tax in each instance would increase the cost of governmental operations: In the case of the State tax on the Federal contractor, to the full extent of the tax exacted; in the case of the State bondholders, to some extent which is difficult of precise ascertainment. Paraphrasing the language of the Supreme Court in the *Alabama* case, we may therefore conclude that so far as a nondiscriminatory Federal income tax upon a holder of a State obligation enters into the cost of borrowing, that is but a normal incident of the organization within the same territory of two independent taxing sovereigns.

What has been said thus far as to the power of the Federal Government to impose a tax upon income received from State obligations applies with equal force to all interest hereafter received whether upon future issues or upon outstanding obligations. No constitutional question as to the validity of a retroactive tax is involved. See *United States v. Hudson* (299 U. S. 498), and cases cited therein. The proposed tax reaches only future income, and is therefore entirely prospective in operation. It possesses the same constitutional validity as the income tax imposed by the Public Salary Tax Act of 1939, upon the income received after 1938 by all Federal judges, irrespective of the date of their appointment to office.

The assumption, which was formerly prevalent that interest received upon State securities was immune from Federal taxation, is analogous to the assumption of many years standing that under *Evans v. Gore* (253 U. S. 245), an income tax upon the salaries of Federal judges would be unconstitutional as a diminution of their compensation. The salaries of some Federal judges were made subject to the income-tax laws by the Revenue Act of 1932, which required that all compensation received by judges taking office after June 6, 1932, the effective date of the act, be included in gross income. Judges who had taken office prior to June 6, 1932, were thus given a statutory tax immunity. In the case of the bondholder, express statutory exemption was included in the act of October 3, 1913, and this provision was repeated in later acts. With the realization that tax immunity of judges who had taken office prior to June 6, 1932, was not a constitutional requirement, the Congress, by the Public Salary Tax Act of 1939, took the final step to remove it. The present proposal to tax future income of all State securities is therefore consistent with the procedure and objective of the Public Salary Tax Act of 1939. A further illustration of the application of the income-tax laws to future income arising out of transactions which were closed before the particular taxing provision was adopted may be found in *Burnet v. Wells* (289 U. S. 670). The grantor of an irrevocable trust was there held constitutionally taxable upon the trust income although the trust had been created before the enactment of the statute imposing the tax.

There is no constitutional basis for contending that income hereafter received upon outstanding State bonds must be free from Federal taxation because the obligations were issued and purchased on that implied or expressed understanding. The Federal Government was not a party to such contracts and the power of the Congress to enact a revenue measure is not fettered by any agreement between individuals or between an individual and a State. There are many illustrations of this proposition. Thus, in *Louisville & Nashville R. R. v. Mottley* (219 U. S. 467), an act of Congress which prohibited the enforcement of certain contracts for transportation was upheld, although applied to a preexisting contract. In *New York v. United States* (257 U. S. 591), an order of the Interstate Commerce Commission which increased an intrastate railroad rate was upheld even though the State charter had provided that a lesser rate should be charged by the company. See also *Norman v. B. & O. R. Co.* (294 U. S. 240).

It accordingly appears that no objection on constitutional grounds can be successfully raised against the proposal to tax the income hereafter received upon outstanding State obligations. Indeed, the assistant secretary of the Conference on State Defense has admitted that if Federal taxation of income arising out of future issues of State bonds is constitutional, "there remains no constitutional bar to Federal taxation of the income received from the bonds now outstanding." (Tax Immunity and the Revenue Bond, by Daniel B. Goldberg, a printed memorandum distributed by the Conference on State Defense, March 1940.)

The Department's study of 1938, referred to above, reached a second and alternative conclusion that irrespective of the weakened vitality of the *Pollock case* and *Collector v. Day*, there is sound basis for a construction of the sixteenth amendment which would remove the immunity of the State bondholder and officer. We there examined at length the history of the ratification of the amendment and presented as exhibits the evidence which would support that conclusion. Accordingly, we refrain from entering into that phase of the problem in detail. One brief observation, however, seems appropriate.

At the hearings last month before the Committee on Ways and Means of the House of Representatives, reference was made to the fears expressed in 1910 by then Governor Hughes, of New York, that the proposed sixteenth amendment would authorize the taxation of interest received from State and municipal obligations. Reference was also made to the subsequent assurances of Senator Root and Senator Borah leading to the conclusion that the amendment was adopted by the legislatures of all the States with the views of the latter two in mind. The statements of Governor Hughes and of Senators Root and Borah, and of many others, were gathered and commented upon in our study. It is significant that a large number of public officials (some agreeing and others disagreeing with the construction placed upon the amendment by Governor Hughes) urged that if the Hughes construction was correct, it furnished an additional ground for the adoption of the amendment. Among these was Frederick M. Davenport, to whom Senator Root's letter had been addressed, and Senator Brown, of Nebraska, who was the father of the joint resolution submitting the amendment to the States. It is also significant that the New York Legislature rejected the amendment in 1910 after the message of Governor Hughes, but ratified it subsequently under the administration of Gov. John A. Dix, who vigorously championed the broadest interpretation of the amendment.

The foregoing and an abundance of similar evidence permitted the conclusion to be reached in our study that the preponderant understanding of the States at the time of the ratification of the sixteenth amendment was that its adoption would in all probability carry with it the power to tax the income from State and municipal bonds.

We should like to reiterate, however, that the constitutionality of the proposed legislation does not depend exclusively upon the acceptance of our construction of the sixteenth amendment, namely, that the words "from whatever source derived" mean exactly what they say, and as so interpreted clearly embrace income from Government securities. With full confidence, the validity of our conclusion may rest upon the basic proposition previously discussed that no implied constitutional immunity from Federal taxation attaches to interest received from State and municipal obligations.

Very truly yours,

SAMUEL O. CLARK, Jr.,
Assistant Attorney General.

Mr. BUCK. Mr. Paul, I rather think I am in sympathy with the proposition of the Treasury that income on State and municipal bonds hereafter issued should be taxable. I certainly am not in sympathy with any attempt to tax income from similar bonds which have been issued hitherto. This Treasury proposal covers the latter as well as the former class of securities.

Mr. PAUL. The Treasury proposal covers both outstanding and future State and local securities. The opinion of Mr. Clark, of the Department of Justice, covers the constitutional issues with respect to both outstanding and future issues.

Mr. BUCK. Then he does not agree with Daniel Webster.

Mr. PAUL. I do not know what you are referring to in Daniel Webster's statements.

Mr. BUCK. I mean the fact that any obligations entered into, any contract entered into, is inviolate.

Mr. PAUL. I do not see any inconsistency between the two statements, Mr. Buck. The Federal Government is proposing to respect its own contractual obligations.

The Federal Government never made any contract with respect to State obligations.

All that the Federal Government has ever done is to put into the statute an exemption provision, and surely there is no taxpayer——

Mr. BUCK. I want to raise as much money as we can, but I want to do so legitimately. The States have made contracts with their citizens who have bought securities, have they not? I do not know whether you own any State bonds, or whether any of my conferees own any of them, but if they do they bought them under the assumption that they were going to be tax free, did they not?

Mr. PAUL. The purchasers of these bonds may have thought when they bought their bonds that they would be exempt. They bet on the continuance of the exemption provision. Those who bought such bonds, I would add, before the *O'Keefe case* was decided in 1939, bought their bonds in reliance upon an erroneous interpretation of the Constitution. When we buy such bonds we must take those risks. At any rate, there is no contract between the Federal Government and the purchaser of State securities.

Mr. BUCK. I do not think that the *Dartmouth College case* had anything to do with the Federal Government. It did have to do with one of the clauses in the Federal Constitution, and I think that applies as much to any attempt on the part of the Federal Government to tax hitherto issued securities. Understand, I am not talking about anything which may be issued hereafter, but about hitherto issued bonds issued by the States.

I have not had an opportunity to read the opinion you have put into the record. I shall do so with great care and painstaking understanding as soon as I get the opportunity.

But it seems to me that, after all, what has happened hitherto must be taken as something that has gone off and is water over the dam, and we cannot go back there and recapture taxation from people who have bought bonds and securities or anything else on the basis that was authorized at that time.

What is your opinion about that?

Mr. PAUL. Of course, I would not be here urging this recommendation of the Treasury if I did not believe it was the right thing to do. I do not believe that the *Dartmouth College case* affects the issue here, because there are no contracts here that have been made by the Federal Government.

Mr. BUCK. A contract has been made between the State of California, let us say, and the man who buys the bonds.

Mr. PAUL. That is true; but that contract is not a contract with the Federal Government, and the State has no right to make any contract with respect to what the Federal Government would do by way of future taxation.

Mr. BUCK. How far do you want to advance the authority of the Federal Government to override contracts that States make?

Mr. PAUL. I do not think it is a question of overriding a contract, Mr. Buck. The two Governments, Federal and State, are both sovereign under our system, and neither has the right to make any contract except within the limitation of its inherent sovereign capacity, and it cannot bind the other.

Mr. BUCK. I am glad to hear you say that. Every proposal that the Treasury has made so far in the last 2 months has been one to override the authority of the States to make their own tax rules.

There is a bill pending now in the Committee on Rules, which I am going to try to defeat when it comes on the floor of the House, if it does, which tends to destroy the States' rights in taxing matters.

Mr. PAUL. You are referring to the Cochran bill.

Mr. BUCK. Yes.

Mr. PAUL. The Treasury is also opposed to that bill and completely agrees with you about that bill, and objected to its passage.

Mr. BUCK. For heaven's sake, do I find that I and the Treasury are in agreement once? Thank you for that.

On page 3 of your statement you say:

> For 1941 the average coupon rate on all outstanding State and local government securities was just over 4 percent.

Is it not a matter of fact, Mr. Paul, that that is a misleading statement?

Mr. PAUL. I certainly did not intend it to be misleading, Mr. Buck.

Mr. BUCK. Is it not a matter of fact, Mr. Paul, that if you go to any responsible dealer in municipal or State securities to buy such securities you will get what they sell you, regardless of what the coupon rate is. You will get just about 1¼- or 1½-percent interest.

Mr. PAUL. You will get more than 1½ percent. The index of the Standard Statistics Co. for April 1942, was 2.49, or approximately 2½.

Mr. BUCK. How does a man with an income, say, of $150,000, know that he can go ahead and pick up some of these great bargains on which he can get an income-tax exemption. I may want to buy some municipal securities for safety.

Mr. PAUL. I mentioned the fact that a great many people have bought them for safety.

Mr. BUCK. Do you not think that is a misleading statement?

Mr. PAUL. I do not think it is misleading because in the same sentence I refer to the average coupon rate which is 4 percent——

Mr. BUCK. That is what I am speaking about.

Mr. PAUL. And we give the yield rate for April 1942.

Mr. BUCK. Do you think that the yield upon municipal and State securities bought is 2.49 on the price the individual has to pay?

Mr. PAUL. It is the average of 15 municipal bonds included in the Standard Statistics Co.'s index. Of course, some of the very finest of those will have a lower yield. Some of the weaker bonds will have a higher yield.

Mr. BUCK. May in inquire whether you included in the list of municipal and State securties bonds of water districts, irrigation districts, and so forth?

Mr. PAUL. We are not using any average of our own. We are taking the Standard Statistics index which, I am told, is accepted by the market.

Mr. BUCK. Suppose you were like I am. Suppose I wanted to buy $5,000 or $10,000 of municipal bonds, and I get a quotation from a responsible firm, and I find that the average was under 1 percent.

Mr. PAUL. Well, I do not see how one could get such a low rate. The Standard Statistics Co.'s index for April 1942, the average rate is 2.49 percent.

Mr. BUCK. Mr. Paul, what is the interest that the Treasury is paying on the last two offers they made to the public?

Mr. PAUL. It is paying 2½ percent on some of its offerings. I do not know whether you are referring to Defense bonds or not, but on long-term securities generally it is higher. But, of course, on their short-term securities it is around one-half of 1 percent. It will depend, I think, on the length of the maturity.

Mr. BUCK. The interest you can obtain from Treasury securities ranges from one-half of 1 percent to 1½ percent; I think that is the correct figure.

Mr. PAUL. We will check the figures.

Mr. BUCK. I read that in the paper this morning.

Mr. PAUL. We will check those figures. I am quite sure the average is 2½ percent.

Mr. BUCK. Is it not fair to assume that you cannot sell any municipal or State bonds with any greater return to the investor than that?

Mr. PAUL. No; the situation with respect to municipal bonds is much more complicated because we have in the market special demands for those bonds because they enjoy tax exemption which our Federal bonds do not enjoy. We are issuing no more tax-exempt Federal bonds. How that affects the equation I could not say precisely. But the situations are not comparable.

Mr. BUCK. On page 7 of your prepared statement you say that—

> the removal of the tax exemption would be more than offset by the drastic decline that has taken place in the general level of interest rates.

I wish, for my own information, you would amplify that a little bit. I do not get the theory, because I do not believe there has been any drastic decline in interest rates; and in the second place I do not know where the tax exemption would be offset by such a thing, if it occurred.

Mr. PAUL. I said in my statement that these bonds of States and municipalities were issued a number of years ago, in great part carrying coupon rates of about 4 percent.

For instance, if you will look——

Mr. BUCK. So far as coupon rates are concerned, that is probably correct. The State may have issued their bonds at 4, 4½, or 5. But that does not mean anything to the investor who goes in and buys them at 120 or 125 as against $100 at which they were issued, does it?

Mr. PAUL. That is correct. If you will look at table 9 in my statement you will find an answer to your question.

Mr. BUCK. I have looked at table 9.

Mr. PAUL. You will see there in the third column from the right, municipal bond yields, from 1922 to 1942, and you will see that the yield on those bonds has dropped from 4.23 to 2.49 percent. For instance, at its peak, in 1933, the rate was as high as 4.71 percent. That clearly indicates a drop in the interest rate, and as long as the interest rates stay at their present level there will be a considerable less interest load on the States because they can issue bonds now at about 2½ percent as against 5 percent in 1933.

Mr. BUCK. Let us not quarrel about future issues. What I have been talking about is those which have been issued, and which you say the Treasury also wants tax-exempt.

Mr. PAUL. That is right.

Mr. BUCK. You want to base that on the fact that the bonds have been issued with 4-percent coupons or 5-percent coupons on them. Is not that right?

Mr. PAUL. Those remarks about 4 percent were addressed——

Mr. BUCK. Regardless of what the purchaser may have paid for them and whether he is earning 4 percent, 1½ percent, or one-half of 1 percent. Is not that true?

Mr. PAUL. The remark you quoted and asked me to amplify was made with reference primarily to the question of how much it would cost the States. It was only secondarily with reference to the question of the elimination of the outstanding exemption. In other words, I was trying to answer the argument made that it would be costly to the States, and I answered it in part by saying with respect to new issues the interest will be at present rates and would be at much less than the rate they are now paying on outstanding issues.

Mr. BUCK. I am not particularly worried about the States, but about what it will cost the individual who has already entered into his contract with the State for these bonds, where he has built up his own individual income basis. What will it cost him?

Mr. PAUL. In table 9 we give, in the next to the last column on the right, the spread between high-grade corporate bond yields and municipal bond yields, and I think that, generally speaking, that spread represents what it cost the individual investor to purchase a tax-exempt bond rather than a taxable bond.

Mr. BUCK. Mr. Paul, would it be any trouble for you to put into the record a statement showing what is used as a basis of the April 1, 1942, average yield of municipal bond interest?

Mr. PAUL. We can only put that in the record if we can get that computation from the Standard Statistics Co.

(The information requested is as follows:)

List of bonds included in Standard Statistics Municipal Bond Index

Baltimore, Md., 4's, March 1, 1961.
Boston, Mass., 4's, June 1, 1961.
Cincinnati, Ohio, 4's, September 1, 1961.
Dallas, Tex., 4¼'s, April 2, 1961.
Denver, Colo., 4¼'s, June 1, 1961.
Los Angeles, Calif., 4's, March 16, 1961.
Memphis, Tenn., 4½'s, September 1, 1961.
Newark, N. J., 4's, June 1, 1961.
New York City, N. Y., 4¼'s, March 1, 1962.
Philadelphia, Pa., 4's, November 1, 1960.
Pittsburgh, Pa., 3¾'s, April 1, 1961.
Providence, R. I., 4's, July 1, 1961.
Richmond, Va., 4¼'s, July 1, 1961.
St. Louis, Mo., 3¼'s, October 1, 1955.
San Francisco, Calif., 4's, June 1, 1961.

Mr. BUCK. Mr. Paul, I have investigated this subject somewhat thoroughly, with the idea in my mind that income of this kind ought to be taxed from now on.

I believe you think it should go back, to be retroactive with respect to contracts hitherto entered into.

If you cannot get that information from your own organization, but get it from this organization known as the Standard Statistics Co., it seems to me you are not utilizing your full ability.

I am not very much of an authority either in the committee or elsewhere, but, Mr. Chairman, I am going to ask authority to insert in the record a list from a very reputable bond house that deals in municipal and State securities, which indicates that the 2.49 percent figure inserted in table 9 by Mr. Paul is entirely out of line at the present time.

A great many people have invested in these securities, Mr. Paul, and, as you know, they are dependent upon their interest from them for their income.

Future income should be taxed thoroughly—there is no question about that—whether it is my salary or anybody else's salary.

But it seems to me that if you propose to go back retroactively and take away something that they have invested their life savings in, you are doing something that is entirely wrong.

Mr. BOEHNE. Either in your main statement, Mr. Paul, or in one of your answers to a question, you said that a citizen of this country is a citizen both of the State and the Nation.

Mr. PAUL. That was in my main statement at the end.

Mr. BOEHNE. And you said that both the State and the Nation are sovereign.

Mr. PAUL. That is correct.

Mr. BOEHNE. Is it not true, however, that the Nation is sovereign only in the regularly constituted delegated powers?

Mr. PAUL. That is true.

Mr. BOEHNE. Which the Constitution gives to the Nation?

Mr. PAUL. That is true.

Mr. BOEHNE. And the burden of proof, therefore, rests with the Nation to show that this is proper constitutional legislation?

Mr. PAUL. Well, Mr. Boehne, I realize that the Federal Government is a Government with delegated powers, and I am perfectly willing to take the constitutional burden. That is why I called upon the Assistant Attorney General of the United States for expression of an opinion on that point.

Mr. BOEHNE. That was my next question. And the opinion of the Assistant Attorney General as written is based on that point, is it not?

Mr. PAUL. It is. It is quite a thorough discussion of the whole subject.

Mr. COOPER. Mr. Paul, without intending to reflect any views that I may have on this subject, I would like to inquire of you briefly in order to get a clear understanding of the Treasury's position. Is it the position of the Treasury Department that there is no legal or moral obligation on the Federal Government to continue the exemption that exists in law now with respect to the State and municipal securities?

Mr. PAUL. That is a correct statement of the Treasury's position, which was somewhat stated just below the middle of page 10 of my statement, which I did not bother to read to the committee this afternoon. And then, Mr. Cooper, the Assistant Attorney General's opinion also deals with the legal issue.

Mr. COOPER. It is correct that the income from these bonds is not now taxed, because there is a specific exemption in the income-tax law?

Mr. PAUL. That is right. In section 22.

Mr. COOPER. And that exemption has continued throughout the existence of the Federal income-tax law?

Mr. PAUL. Yes. It was put in originally, I think, in the 1913 act, and has been in every act since that time.

Mr. COOPER. All right. And it is by reason of the existence of that specific exemption that the income from these securities is not now and has never been taxed by the Federal Government?

Mr. PAUL. I believe that that is true, Mr. Cooper. Of course, that is subject to the question of constitutionality. I believe it is the only reason.

Mr. COOPER. You believe it is the only reason?

Mr. PAUL. That is right.

Mr. COOPER. Following that line of reasoning a little further, there have also been other exemptions in the Federal income-tax law all through the years?

Mr. PAUL. A great many; yes, sir.

Mr. COOPER. A great many exemptions?

Mr. PAUL. That is right. Section 22 contains a list of quite a number of statutory exemptions or exclusions from gross income.

Mr. COOPER. I now remember that the first income tax act exempted a thousand dollars for single persons and two thousand dollars or twenty-five hundred for married persons from individual income taxation. Is that right?

Mr. PAUL. The first act?

Mr. COOPER. Was it not the first?

Mr. PAUL. I think they were higher in those days—$3,500 or something like that, as I remember it.

Mr. COOPER. Anyhow, whatever the amount of the first act was, every act since then has given specific exemptions for individuals?

Mr. PAUL. That is right.

Mr. COOPER. Of course, the exemption now stands at $750 for single people and $1,500 for married people.

Mr. PAUL. Yes, sir; that is right.

Mr. COOPER. That exemption has been changed many times throughout the years?

Mr. PAUL. That is right.

Mr. COOPER. And is subject to change at any time that Congress may see proper?

Mr. PAUL. It might even be eliminated altogether, I should think.

Mr. COOPER. Because in line with your position it is only a specific exemption provided in the law?

Mr. PAUL. That is right.

Mr. COOPER. Then, of course, under section 101 there are quite a number of corporations that are exempt?

Mr. PAUL. That is right.

Mr. COOPER. From the income-tax law, I mean.

Mr. PAUL. That is right.

Mr. COOPER. I just happen to have that section before me. In section 101 there are 19 different paragraphs covering various types of corporations that are exempt under this section. That is true, is it not?

Mr. PAUL. That is true. Then you might also refer to section 23, which has a list of deductions, which may be equivalent to exemptions.

Mr. COOPER. Under this section 101, No. 1 under that is labor, agricultural, and horticultural organizations; 2, mutual savings banks; 3, fraternal beneficiary societies; 4, domestic building and loan associations; 5, cemetery companies; 6, corporations and any community chest fund or foundation; 7, business leagues, chambers of commerce, real estate boards, and so forth; 8, civic leagues or organizations; 9, clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes; 10, benevolent life insurance associations; 11, farmers' or other mutual hail, cyclone, or gasoline fire insurance companies or associations; 12, farmers', fruit growers', or like associations; 13, corporations organized by any association exempt from the provisions of paragraph 12 or members thereof; 14, corporations organized for the exclusive purpose of holding title to property, collecting the income therefrom, and turning over the entire amount thereof, less exemptions, to any organization which itself is exempt from the tax imposed by this chapter; 15, corporations organized under an act of Congress, and so forth; 16, voluntary employees' beneficiary associations; 17, teachers' retirement fund associations; 18, religious or apostolic associations or corporations; 19, voluntary employees' beneficiary associations.

As I understand it, it is the position of the Treasury that this exemption now in the law as to income from State and local securities stands as an exemption in many respects like all these other exemptions now included in the income-tax law.

Mr. PAUL. That is right.

Mr. COOPER. And may be altered, changed, or removed at any time if Congress would see proper to do so?

Mr. PAUL. That is the Treasury's position.

Another thing that you might mention by way of analogy is the dividends which were formerly exempted from the normal income tax. We took that exemption out in 1936. We had it in the statute, and we took it out of the statute, and we may do the same thing with respect to this exemption of income from State and municipal bonds, always assuming that we are correct in our constitutional position, which we base on the Assistant Attorney General's opinion.

Mr. COOPER. I thank you.

Mr. MCLEAN. Mr. Paul, do I understand you to say that the only reason why State and municipal securities are now exempt from taxation is because of a statutory enactment of the Congress in the income tax law of 1913?

Mr. PAUL. No. It is a provision in the Internal Revenue Code now.

Mr. MCLEAN. Well, as reenacted in the code. I mean to say, do I understand the Treasury's position to be that the only reason why State and municipal securities are now not subject to taxation is because of the exemption in the statute, disregarding the decision in *McCullough* v. *Maryland*, which established the immunity rule?

Mr. PAUL. That provision is the only thing that bars the taxation of the interest on those bonds. In other words, there is no constitutional barrier to taxation, and the only thing that keeps them exempt is this exemption provision of section 22. Without that exemption provision they would be swept into the orbit of taxation by the beginning of section 22 (a), which refers to the taxation of gains, profits, and income from any source whatever.

Mr. MCLEAN. What I want to get at is the approach of the Treasury Department to this proposal. There are two schools of thought. Your school of thought is that State and municipal security holders are now evading taxation because of this situation?

Mr. PAUL. I do not say that they are evading it. I think they are enabled by the statute to avoid their just share of the tax.

I do not blame any holder of these bonds for not paying a tax. I simply say that the statute ought to be changed so that they cannot avoid their just share of the tax burden.

Mr. MCLEAN. But your approach to the proposition is one that has entirely to do with revenue, is it not?

Mr. PAUL. No. It is not.

Mr. MCLEAN. It is not?

Mr. PAUL. Our approach is from the revenue and——

Mr. MCLEAN. What object are you seeking to attain?

Mr. PAUL. Two things. The first thing is that we are trying to obtain a just distribution of the tax burden, and we think this exemption prevents us from making that just distribution. Secondly, we are interested in the large amount of revenue which would ensue from the taxability of this interest.

Mr. MCLEAN. It goes without saying that you are more interested in revenue than you are in other considerations, does it not?

Mr. PAUL. I do not think that it goes without saying.

Mr. MCLEAN. Isn't this true: that in the approach which you have just stated on the two grounds which you have mentioned you absolutely disregard the danger of placing the weapon of taxation in the hands of the Federal Government, with its threat against the preservation of the sovereignty of the States?

Mr. PAUL. Mr. McLean, I do not think it is a question of placing it one place or the other. I think Congress has this power, and the Assistant Attorney General's opinion, which I have just put in the record, agrees with that view.

In other words, with no constitutional barrier the responsibility is on Congress to exempt or to tax.

Mr. MCLEAN. Would you in the light of what has happened under our experience under the Constitution of the United States place all power and authority in a strong centralized government? In other words, would you call a constitutional convention today to reconstruct our Government in the light of the experience that we have had in the last 150 years?

Mr. PAUL. I think, if I may say so——

Mr. MCLEAN. Supplementing that question: In reaching the conclusion to call a new constitutional convention would you disregard the doctrine of *McCulloch* v. *Maryland* and the wisdom of John Marshall and Daniel Webster?

Mr. PAUL. Answering the first part of your question, Mr. McLean, I would not call a constitutional convention at this time. I am perfectly satisfied with the Constitution as we have it.

The question here is, What does the Constitution mean, the Constitution that we now have? It is not the Constitution that might emerge from some convention. I am saying that the Constitution that we have today enables us to tax the interest on State and municipal securities.

Mr. MCLEAN. Is it any different from the Constitution that we had in 1818?

Mr. PAUL. In this respect it is no different. It is no different in that there is no provision in the Constitution anywhere about this subject.

Mr. MCLEAN. We can argue about that. But isn't this doctrine one of the principles we have in mind when it is said that John Marshall hung the flesh on the skeleton of the Constitution and gave it life, and which became and have been recognized as fundamentals of our constitutional system, and recognized and restated as constitutional provisions right on down until as recently as *Collector* v. *Day*?

Mr. PAUL. That doctrine that you refer to, *Collector* v. *Day*—that case was decided a great many years ago, too.

Mr. MCLEAN. How many years ago?

Mr. PAUL. About 70 years ago.

Mr. MCLEAN. And the other case was decided 150 years ago?

Mr. PAUL. The question is not how long ago that decision was, Mr. McLean. The question is what the Supreme Court will do.

Mr. MCLEAN. When you tell us that a case is not good because it was decided 70 years ago and then tell us that another case is good because it was decided 150 years ago, I do not understand your legal philosophy.

Mr. PAUL. I did not mean to say that.

Mr. MCLEAN. Let us put it this way: You think that the doctrine of *Collector* v. *Day* was good doctrine at the time it was decided?

Mr. PAUL. I think it was probably an unwise decision. But I cannot question the Supreme Court. I say that now it has been overruled by the Supreme Court.

Mr. MCLEAN. And *McCulloch* v. *Maryland* was good doctrine?

Mr. PAUL. I think so. It emphasized the power of the Central Government, and was probably a wise decision at the time. I am not questioning it.

Mr. MCLEAN. Would you disregard *McCulloch* v. *Maryland* today?

Mr. PAUL. I do not think I would.

Mr. MCLEAN. Didn't that decide that the power to tax was the power to destroy, and that you put a dangerous instrumentality in the hands of concurrent governments when you gave them the power to tax the instrumentalities of each other?

Mr. PAUL. The case did not decide that question, Mr. McLean. It had a statement in it. You are quoting one of Mr. Justice Marshall's statements, which is a very general statement and which has been somewhat criticized by the late Mr. Justice Holmes in his opinion in the *Panhandle case*. It is such a broad generalization, that the power to tax is the power to destroy. And Mr. Justice Holmes said, "Not while this Court sits."

Mr. MCLEAN. Let us lay aside words and phrases. Let us look at the principle. Were not these the facts: The Government of the United States established a bank, and the State of Maryland wanted to keep that bank out of the State of Maryland, and they put such a big tax on it that the bank could not come into the State? That was their purpose, was it not?

Mr. PAUL. The Court held that it was discriminatory taxation. That is true.

Mr. MCLEAN. I am not asking you the nature of the tax. That is what happened in that case, was it not?

Mr. PAUL. There was a statute passed. That is right.

Mr. MCLEAN. There were two banks. There was a bank of the State of Maryland. There was a bank of the United States. The State of Maryland desired to keep the bank of the United States out of Maryland. Isn't that true?

Mr. PAUL. I think that that was the purpose; yes.

Mr. MCLEAN. And the State of Maryland put a tax on any business done by the bank of the United States in the State of Maryland.

Mr. PAUL. That is right.

Mr. MCLEAN. They said, "You cannot issue notes unless you print them on paper provided by the State of Maryland."

Mr. PAUL. That is right.

Mr. MCLEAN. "And that paper must have a stamp on it."

Mr. PAUL. That is right.——

Mr. MCLEAN. "Which represents a tax."

Mr. PAUL. That is right.

Mr. MCLEAN. "A tax so high that you cannot do any business in Maryland. Therefore we will have the State of Maryland for our own bank."

Mr. PAUL. That is right. That is a correct description.

Mr. MCLEAN. And when Daniel Webster wrote the brief didn't he say that this was an illustration of how the power to tax is the power to destroy?

Mr. PAUL. It is a good many years since I have read the case, and I will not quote——

Mr. MCLEAN. That is what he said, and John Marshall accepted it.

Mr. PAUL. I know that John Marshall seconded the opinion.

Mr. MCLEAN. And he also said this: He said "that the State may tax mails, may tax the mint, may tax patent rights, may tax the papers in the customs house, may tax judicial process, may tax all the means employed by the Government to an excess which would defeat all the ends of government. That was not intended by the American people. They did not intend to make their government dependent upon the States." That has been a principle of our Government ever since, and that was the idea when the sixteenth amendment was adopted.

When the sixteenth amendment was proposed, Governor Hughes said, in effect, "The danger about this thing is that it will open the door to the Federal Government taxing instrumentalities of the State of New York and thereby affect its sovereignty, and I withhold my approval of it."

It was not until the now famous letter of Senator Root, and the argument of Senator Borah, convinced the governor of New York and the governors of other States that the immunity rule as recognized would prevent the Federal Government from interfering with instrumentalities of the States and that the immunity rule would continue that New York and New Jersey and some other States gave their approval to the sixteenth amendment.

In everything that I have read that has come to me from the Treasury before you came on the scene, and in your brief today, there is a strained effort to explain away the circumstances surrounding the Root letter. For instance, in your brief you say that the State of New York did not approve of the sixteenth amendment until Governor Hughes had retired from office.

Governor Hughes' retirement from office is a very slim reason to advance as to why the State of New York approved the sixteenth amendment.

In this situation, why does the Treasury not consent to the people by a constitutional amendment deciding that the immunity rule be eliminated, and the Federal Government given the right to tax State instrumentalities?

Mr. PAUL. The reason why the Treasury does not urge a constitutional amendment is because it deems such an amendment unnecessary.

That same line of discussion was before us at the time we had so much in the forefront the question of taxing State salaries, and the Supreme Court held in the *Gerhardt case* that that amendment was not necessary; that we had the power. We are in the same position with respect to municipal bond interest that we were before with respect to State salaries. And we were upheld by the Supreme Court.

Mr. McLean. Then, laying aside all judicial determinations and all decisions, the Congress is faced with a broad question. Let us set all other considerations aside, and face the broad question: Is it good governmental policy to allow two concurrent governments to have the right to reciprocal taxation?

Mr. Paul. I think it is. The position of the Treasury for some time has been in favor of eliminating these intergovernmental immunities applicable to obligations.

Mr. McLean. Let us lay aside the question of the Treasury's position, and let us argue this thing academically from the standpoint of the experience of the Nation and of the people. Does your proposition contemplate that the State of New Jersey shall have the right to tax Federal instrumentalities?

Mr. Paul. Yes, it does. We want to have the immunity of both eliminated as to their obligations.

Mr. McLean. You would give the State of Tennessee the right to tax the Tennessee Valley Authority on its bonds?

Mr. Paul. We would insofar as we had not already made a contract. I don't know about the Tennessee Valley bonds. In some bonds, in a great many of our previous Federal issues up to about a year ago, we contracted the exemption.

Mr. McLean. You contracted the exemption with the Tennessee Valley Authority?

Mr. Paul. I am not sure about that particular one.

Mr. McLean. I am asking you——

Mr. Paul. I am not familiar with the Tennessee Valley bonds.

Mr. McLean. Let us suppose now, no matter what you did—I am just talking academically—let us suppose that you found it desirable to exempt bonds of the Tennessee Valley Authority from Federal taxation, and suppose you did not find it so desirable to exempt the bonds of the South Carolina Power Authority. You could tax the bonds of the South Carolina Power Authority. You could tax them out of existence, could you not, and still leave the Tennessee Valley Authority the beneficiary? Could you not by that means drive out of existence the South Carolina Power Authority and turn all of its assets over to the T. V. A.?

Mr. Paul. I do not think that you could. I think that that would be discriminatory taxation, and would be therefore unconstitutional.

Mr. McLean. No matter what we may think, it is possible, is it not?

Mr. Paul. I do not think so.

Mr. McLean. Given a friendly Supreme Court, what is going to prevent it?

Mr. Paul. I cannot do anything but accept the Supreme Court that we have.

Mr. McLean. Don't let us hide behind the present Supreme Court or any others. I am asking you now, and I want you to tell me as a Member of the Congress what is the thing for me to do now for the best interest and preservation of my Government, irrespective of John Marshall or Daniel Webster or any Supreme Court decision. I am asking you to tell me if you think it is safe for two concurrent governments to have equal power of taxation, and I am giving you an illustration and asking you if you think there is any danger in that situation.

Mr. Paul. The answer is that I do not think there is any danger in that situation; that it is entirely safe to follow the Treasury recommendations insofar as the point that you raise is concerned.

Mr. McLean. You do not think that the Federal Government might come along and put a tax on a State authority so high that they could not do business?

Mr. Paul. I would have confidence that the Congress would not do that, in the first place; and in the second place, that if the Congress did do it, our Supreme Court would hold that the tax was discriminatory and therefore unconstitutional.

Mr. McLean. Well, Mr. Paul, when we studied the Constitution we were taught that it was to protect against human frailties; that it was to preserve certain principles which experience had taught were essential to human freedom. And therefore there were put in the Constitution certain restraints and certain limitations.

It does not make any difference what we think individually. The fact is that certain things had happened. And one of the things that had happened was the abuse of the power of taxation by the government in power; and with those thoughts in mind the Constitution was adopted, and with those thoughts in mind the Constitution was accepted. And over all these years we have had this immunity rule which you do not dignify as anything more than a stautory enactment.

For instance, Mr. Cooper has cited a number of exemptions under the Federal Code. And I can understand that there is a reason for them. For instance, there is a reason why a man should be exempted for the dependents in his home.

Mr. Paul. That is right.

Mr. McLean. That is quite a different reason from that upon which the taxation of State securities is exempted, is it not?

Mr. Paul. Yes.

Mr. McLean. There is a reason for agricultural products to be exempted to some extent. The mere fact that there are a number of exemptions mentioned in the Revenue Code does not give them any particular dignity or importance. Nor does it drag down the great time-honored rule of immunity to the level of those other things, does it?

Mr. Paul. I quite agree that those exemptions in the statute have a different history and a different underlying cause.

Mr. McLean. The mere fact that there are a great many of them does not add any importance to the argument for this exemption or add any relevancy at all to the taxing of bonds.

Mr. Paul. There were different reasons underlying each different exemption, of course.

Mr. McLean. That is what I say. The mere fact that there are 15 or 16 exemptions does not mean that they have any relevancy to each other.

Mr. PAUL. I think what Mr. Cooper had in mind was not that but, rather, that he was trying to show that there were other exemptions in the statute, and he was trying to show that any provision of the statute which is nothing more than an exemption could be changed.

Mr. McLEAN. I gathered from his enumeration of so many exemptions that he was lending importance to the fact that this immunity from taxation did not amount to anything more than a mere statutory enactment. But I put it on a much higher plane. I put it on the plane of a fundamental principle which goes to the preservation of our institutions, the sovereignty of the States, and the importance of the States; and to protect the States, as well as the Federal Government, from putting into the hands of any governments with concurrent jurisdiction an instrumentality by which one can destory the other or ruin its institutions.

And I may say and I do not have to tell you—I sympathize with you in your position—a distinguished member of the bar, who has written a number of textbooks, who is called down here to argue against this fundamental proposition before a committee of Congress, and I am satisfied that you must know that underlying the whole argument is this rule of immunity and the reason for it, the reason which actuated Governor Hughes and Senator Root and Senator Borah, the reason that actuates me in my opposition as I understand the constitutional law of our country, and the reasoning that actuated Marshall and Webster and all the rest.

And in your brief and in your statement here today, I have not been able to find to my satisfaction sufficient explanation of how you can give the Congress the right to say that this great immunity rule, coming down to us from *McCulloch* v. *Maryland*, has only the weight of a mere statutory enactment, which Congress can legislate out of the way.

That is all, Mr. Chairman.

Mr. BOLAND. I ask unanimous consent, Mr. Chairman, to have inserted in the record a statement by Mr. Friedman in answer to the statement made by Mr. Paul, in regard to the capital-gains tax.

The CHAIRMAN. Without objection, that may be inserted.

(The document referred to will appear in the revised edition.)

Mr. DISNEY. Mr. Paul, first, I wish to satisfy myself that you are right on this proposition, and then I want to ask you about some other things.

Last year, when we had this proposal or another related proposal before us, when the Treasury was down here, an odor of sanctity spread over the room which suggested that the Treasury would be horrified at any attempt to upset this immunity. But now in less than a year's time we are confronted with that very proposition. How do you explain that?

Mr. PAUL. I think December 7 had a lot to do with it, Mr. Disney.

Mr. DISNEY. It becomes a need for money instead of a moral obligation?

Mr. PAUL. No. I think the Secretary in his original statement to this committee made reference to the point that you have in mind. I think he said that the war had changed the situation so as to make a gradual elimination of the exemptions insufficient in his opinion.

Mr. DISNEY. I remember very distinctly Mr. Sullivan made a speech at St. Louis a year ago at a conference of mayors in which he stated flatly that it would be a breach of a moral obligation.

Mr. PAUL. Of course, I do not have the speech to which you refer. But the answer to your question as far as I am concerned is that considerations of equity and morale with our increased tax load today and the various other considerations that I have mentioned in my statement make it altogether a different question today from what it was before.

Mr. DISNEY. I would not think personally that the advent of the war would make a difference in the moral aspects of a contract, express or implied.

Mr. PAUL. Neither would I. I do not think that there is any contract, express or implied.

Mr. DISNEY. We will pass that. I still remember the very broad assertions of there being a moral issue involved, and I do not think that they should change so suddenly, although we do need money, and I believe that we ought to go out and get it by all the different methods and means that we can. Did I understand you to say in answer to Mr. McLean that you would dispose of the immunity on both sides, that of the States and of the Government?

Mr. PAUL. I think we should be consistent, Mr. Disney.

Mr. DISNEY. How far, now, would that go? Would it go so far that the State and Federal Governments could indirectly tax each other? For instance, would you permit a State to put a tax on a Federal building and the Federal court pay a special assessment for that Federal building?

Mr. PAUL. I think we may leave that to the legislatures, which will certainly not pass a statute that will go to too great extremes.

Mr. DISNEY. If you turn loose this doctrine of immunity, the legislature could do it, could it not?

Mr. PAUL. Mr. Disney, it is not a question of turning loose the doctrine of immunity. It is loose. Under the present interpretation of the Constitution there is no immunity with respect to these obligations. That, at least, is our position. Now the only question before us is whether we shall pass a particular provision in this statute.

Mr. DISNEY. I want to clear this up and see whether I am thinking clearly. If it is loose, as you say, what is to prevent the Oklahoma Legislature from passing a State statute saying that Oklahoma may have a right to put a tax on the Federal building there?

Mr. PAUL. The only thing that we are talking about is taxation of income from obligations. We do not have the question of imposing a tax on the Government.

Mr. DISNEY. I am coming to that a little later. Now I want to stick close to this theoretical waiver of immunity on the part of both Governments.

It seems to me—and my idea on it is rather nebulous, I agree—that if we do proceed on that theory, you do give leave to the legislature to permit such an action, though it sounds pretty far fetched and rather ridiculous; but you make it possible.

Mr. PAUL. I do not think that you do. The question here is the question of whether to tax certain income. It is not a question of taxing the Government.

Mr. DISNEY. But I am taking you at your word on what you said to Mr. McLean about disposing of this mutual immunity.

Mr. PAUL. What I said to Mr. McLean may have been pretty broadly stated, as frequently happens when one is talking extemporaneously. But all that I meant to say there was that I thought there should be a complete reciprocity as to the right to tax income from these obligations.

Mr. DISNEY. Let us take that proposition, then. I do not want to take a lot of time. If there is that complete reciprocity, then the illustration that I suggested would not be inconceivable, would it?

Mr. PAUL. It would.

Mr. DISNEY. Of the State taxing the Federal Government's real estate.

Mr. PAUL. I do not believe that the Constitution would be interpreted so broadly as to enable one government to tax another government directly. I am talking here, as I say on page 8, about private immunity from Federal income tax.

Mr. DISNEY. I want to stick to that subject. I want to see if I can follow this thing through and do a little thinking on the subject. Evidently Congress thought it was sound that neither government should tax the other directly or indirectly. Evidently the earlier decisions of the Court were to that effect.

Mr. PAUL. Of course, the *King and Boozer case* is the most recent case.

Mr. DISNEY. Yes. I agree that Mr. Justice Marshall was wrong when he announced that the power to tax was the power to destroy.

Mr. PAUL. Of course, the position of the Treasury is that the States ought to have won the *Boozer case*.

Mr. DISNEY. What was that?

Mr. PAUL. The position of the Treasury is in favor of the right of the States to tax also.

Mr. DISNEY. To tax what?

Mr. PAUL. To tax the income, for instance, of Federal employees. To tax the income of Federal securities where there is no previous contract made by the Federal Government.

Mr. DISNEY. It seems to me that that leads into a taxation by one Government of the other sooner or later, whichever one seems to be the most powerful. And, of course, you and I know that the central government finally gets to be the most powerful.

Now, let me ask you this: Were you before the committee here a week or so ago when we were speaking about this?

Mr. PAUL. I do not think so.

Mr. DISNEY. Suppose we do give the Federal Government the right to tax the income from State and municipal issues. We will suppose that the Congress would decide to put some regulations on those issues, and determine what particular issues that income should come from. Then let us say that after a while some other Congress should decide to make a difference between the issues and tax some and exempt others. Certainly the Federal Government and Congress could decide to take jurisdiction over the issues of municipal and State bonds. You would have that authority under this doctrine, would you not?

Mr. PAUL. No. I would say, decidedly not. I think that the first part of your statement would involve very definitely the discrimination rule.

Mr. DISNEY. On this question of discrimination, how far can you go in taxing the income of States and municipalities? Can you go further than the subjects that I have indicated?

Mr. PAUL. I do not think you could, because you would be prevented by various provisions of the Constitution. You would be discriminating if you made any unfair distinction between issues. In other words, all classifications must be reasonable, and I think a classification to distinguish unreasonably between different issues would be unconstitutional.

Mr. DISNEY. But suppose that the Supreme Court sustained it?

Mr. PAUL. Of course, if the Supreme Court sustained it, that would answer the question. That seems to me to beg the real question here.

Mr. DISNEY. I am not trying to beg the question. I am trying to find out whether I am correct or not.

Mr. PAUL. I do not base our position merely on the question of revenue. I think it is a question of revenue, as I told you before, but I would also put it on morale.

Mr. DISNEY. In the old declaration there is something said about a swarm of Federal agents. I can visualize that if you carry this thing far enough you may actually see sitting down at the city council a swarm of Federal agents telling them what kind of bonds to issue, and not letting any county issue bonds that do not come up to specifications.

Mr. PAUL. I have not considered that precise apprehension of yours, but I think it is pretty far removed from the question that we have before us, of taxing the income.

Mr. DISNEY. If we tax the income of the States and municipalities, it seems to me that we do not have much further to go to let us tax each State directly or indirectly or let the States tax the Federal Government directly or indirectly.

That is all.

Mr. KNUTSON. Does the Treasury recommend reciprocal taxation?

Mr. PAUL. It does, Mr. Knutson.

Mr. KNUTSON. Would you confine such right to Federal and local securities?

Mr. PAUL. I do not believe I understand that question. That is all that we have involved here.

Mr. KNUTSON. Would you confine the right to tax on the part of the States only to Federal bonds, like victory bonds and liberty bonds?

Mr. PAUL. I would say that if this Congress should remove this exemption from the statute now contained in section 22, it ought to consent to the taxation by the States of Federal bonds. In other words, all we have here is a question of taxing the interest on bonds.

Mr. KNUTSON. I understand that. I am speaking of the income, the interest on the bonds. I thought that it was understood that that was the subject that we are discussing.

What about the numerous bond issues that were guaranteed by the Federal Government both as to principal and interest? To name a few of them: The Federal land bank bonds, the Home Owners' Loan Corporation bonds, Tennessee Valley Authority bonds, Columbia Valley Authority bonds, and others, of which I understand there are nobody knows just how many, but I understand that there are twelve or fifteen billion dollars outstanding in those bonds, both in interest and principal.

Mr. PAUL. I do not have those figures before me.

Mr. KNUTSON. The figures would not make any difference. It would not matter whether it was two billion or twenty billion. The principle is the thing that I am considering here.

Mr. PAUL. I want to be sure that I understand your question.

Mr. KNUTSON. What about the numerous bond issues that have been guaranteed by the Federal Government both as to principal and interest? To name a few: The Federal land bank bonds, the Home Owners' Loan Corporation bonds, the Tennessee Valley Authority bonds, the Columbia Valley Authority bonds, and others.

Mr. PAUL. Wherever in connection with those issues we have made a contract that the interest should not be taxable, I would not suggest that we break that contract. And I think that in a great many of those cases we have so contracted.

Mr. KNUTSON. But, Mr. Paul, you are asking us to break contracts. You are asking us to have this bill carry a provision that would permit the Federal Government to tax outstanding State and municipal bonds that were sold subject to being tax-exempt.

Mr. PAUL. But that was not our contract. That was not the Federal Government's contract.

Mr. KNUTSON. What is the Federal Government?

Mr. PAUL. Historically, of course, it is the Government that was created under the Constitution, as somebody has said, with delegated powers under the Constitution.

Mr. KNUTSON. Delegated by whom?

Mr. PAUL. By the States.

Mr. KNUTSON. In other words, those States were the creator of the Federal Government?

Mr. PAUL. The States made a compact which resulted in a Federal Government. That is right.

Mr. KNUTSON. The Thirteen States?

Mr. PAUL. Yes, sir.

Mr. KNUTSON. The Commonwealth got together and drafted a Constitution and set up a Federal Government. Isn't that right?

Mr. PAUL. That is right.

Mr. KNUTSON. So the Federal Government is the creature of the States?

Mr. PAUL. That is right.

Mr. KNUTSON. Now, if the States issue bonds which they say are tax-exempt, that is the creator who says that. Then the creature says, "We won't pay any attention to the provision that those bonds carry about tax-exemption."

I am not a lawyer. I may seem very, very dense to some of your legal advisers down there, who shake their heads. Nevertheless, I am interested in this thing from the standpoint of principle. And I know that you are, and I have a high regard for you, Mr. Paul.

Mr. PAUL. Thank you.

Mr. KNUTSON. But I am just wondering whether the Federal Government would have the right, even assuming that it is a legal right, has it a moral right to take an action that would cause a violation of a contract that had been entered into between the State and its people?

Mr. PAUL. I think it has the right, Mr. Knutson, because the State never did have any right to create an exemption privilege as to the Federal tax. What the State could do was to make an exemption as to its own tax.

But, notwithstanding the fact that the Federal Government was created originally in a historical sense by the compact of the States, it is the sovereign government; and the whole doctrine of immunity, indeed, is premised on the doctrine of sovereignty.

Mr. KNUTSON. I agree with you that it is a sovereignty question. I think it was settled very definitely back in the sixties. But what is worrying me is if we have a moral right to tax bonds that have already been issued as tax-exempt.

Mr. PAUL. Of course, I may be wholly wrong about it; but it seems to me that we have every moral right. Indeed, it seems to me that on the moral side of the question the shoe is on the other foot.

We have a moral right to tax, in my opinion, because all the States could do was to grant an immunity as to their own tax; and we are not violating our own contract and we are not proposing to take away from the holders of these bonds anything that the State issuing the bonds had the right to give to those bondholders.

Mr. KNUTSON. As I recall it, a year ago the Treasury Department suggested that only outstanding State and municipal issues be taxed. Am I right?

Mr. PAUL. That is right. The Secretary did take that position at one time.

Mr. KNUTSON. The Treasury took that position a year ago, as I recall it.

Mr. PAUL. About a year ago. That is right.

Mr. KNUTSON. I concede, of course, that this situation is vastly different now; and if I can be persuaded that it is necessary to do this in order to raise money to save the Republic, I am going to vote for it. But you say that the primary purpose is not to derive more income, but, rather, to equalize taxation throughout the country.

Mr. PAUL. Oh, no. I want to make my position clear.

Mr. KNUTSON. I thought that that was what you told us.

Mr. PAUL. I may have said—I may have used——

The CHAIRMAN. There is too much confusion here. We cannot hear what is being said.

Mr. PAUL. I may have used the word "primary." But if I did, I would like to make it clear that there are no scales by which I can precisely weigh the relative importance of the considerations that go into our decision to make these proposals.

I say this: That the revenue aspect of the problem is a very important aspect. Two-hundred-odd-million dollars of revenue at this time is a very serious matter.

On the other hand, we are also motivated in making the proposal by the fact that we think that this exemption discriminates in favor of the high-income taxpayers and has a very bad effect on war morale at this time, and it is inequitable and enables a large number of taxpayers to pay no income tax, and that is particularly true at a time like this.

Mr. KNUTSON. When Mr. Disney questioned you, or, rather, expressed the fear that in granting the Federal Government this power of taxing the States, the income from State and municipal bonds, he expressed the fear that it would serve to bring the States under the direct control of the Government so far as their fiscal affairs are concerned.

You realize, I am sure, that you could wreck all the fiscal affairs of the States, insofar as they were tired up with bond issues, through taxation. You could impose a tax so high that nobody would buy those bonds, which would result in an absolute stopping of future issues of State and municipal bonds, which are badly needed for sanitary and other purposes. I do not think that that is a violent assumption at all.

Mr. PAUL. Mr. Knutson, I do not want to stop the States from issuing any bonds. All that we are proposing is a statute which enables the Federal Government to collect a tax on the income from State and municipal securities.

Now, we can certainly draw that statute in such a way that that is all it will accomplish. Then these other things that may happen or will not happen as future Congresses may determine and according to the Constitution as it may protect the States.

Mr. KNUTSON. That is where the rub is—what future Congresses may determine. As Hamlet said, "There is the rub."

Mr. PAUL. Not only that, but there is also in the equation the power of the Supreme Court to decide any statute unconstitutional if it violates the Constitution.

Mr. KNUTSON. At the rate that we are traveling it is not a violent assumption to assume that we are headed for a pretty radical form of government in this country.

Suppose some administration should succeed this one that is even more radical than this administration, and that they made up their minds that they wanted to break down the power of the States. You have your law on the statute books. One of the first things that they would do to put the screws on the States would be to increase the tax on the income from these bonds.

Mr. PAUL. Then it would be discriminating against a certain type of income, which, I think, would be unconstitutional.

Mr. KNUTSON. Who would stop them?

Mr. PAUL. I think that the Supreme Court would stop them.

Mr. KNUTSON. You are more optimistic than I am, Mr. Paul. I happen to have read some recent decisions of the Court. I think that this Court has in every case made the construction of the law that they are told to make.

Mr. PAUL. I, of course, disagree with you on that point.

Mr. KNUTSON. Some of the old Justices that have passed to their reward must be turning over in their graves many times a month the way things are going as far as the Supreme Court is concerned.

I do not want to depend on the Supreme Court, and I do not think that you do. It is no longer the anchorage that it used to be, in my opinion.

I do not want to indict the Court. It may be that I have not kept step with the times. But as far as I am concerned, I think that Congress ought to keep as much of this power in their own hands as they possibly can.

There is no question in my mind but what we can tax all these issues that I have mentioned, like the T. V. A. and the Columbia Valley Authority and others.

That is all, Mr. Chairman.

Mr. REED. Mr. Paul, I believe you said when you were here about a year ago that the Secretary disclaimed any intention of taxing municipal bonds that were outstanding, State and municipal bonds. That is the way I understood your testimony here this afternoon.

Mr. PAUL. I was not here then.

Mr. REED. Maybe it was Mr. Tarleau.

Mr. TARLEAU. I think that is substantially correct.

Mr. REED. I wonder if you have a record of the number of State and municipal bonds that have been issued since that statement was made by the Secretary of the Treasury here before this committee.

Mr. PAUL. I am told that we can get an approximation of that.

Mr. REED. I would like to have you do that and put it in the record.

Mr. PAUL. I will do that.

(The information requested is as follows:)

State and local sales of bonds and short-term notes, by months, January 1941–March 1942

	1941	1942		1941	1942
LONG-TERM LOANS			SHORT-TERM LOANS		
January	$77,926,007	$118,540,286	January	$178,380,694	$119,069,784
February	199,174,025	49,334,825	February	177,937,444	38,276,814
March	104,227,835	25,455,130	March	63,074,007	185,613,753
April	101,633,509		April	89,309,760	
May	115,981,023		May	139,982,789	
June	144,805,574		June	41,964,523	
July	151,609,987		July	180,919,408	
August	48,966,986		August	169,042,250	
September	65,032,000		September	33,640,169	
October	75,470,985		October	99,130,169	
November	80,732,461		November	113,454,029	
December	90,578,249		December	90,606,202	
Total	1,239,492,892	193,336,191	Total	1,407,763,154	340,960,351
Number of issues	5,546	536	Number of issues	935	348

Source: The Bond Buyer, sec. II, Apr. 11, 1942. Treasury Department, Division of Tax Research, Apr. 17, 1942.

Mr. REED. Here is the statement by Mr. Morgenthau on that question that I referred to:

Unfortunately, tax-exemption clauses appear in many of the outstanding issues of Federal securities and these promises must not be violated. In the case of State and local securities, however, there has never been any contract or moral commitment between the Federal Government and the security holders or the State and local governmental authorities regarding Federal taxation. Since the Supreme Court decision in the case of *Graves v. O'Keefe* in 1939 fair-minded experts in constitutional law have had no doubt of the Federal power and moral right to tax the income from State and municipal securities.

That statement was made on March 3.

I do not know how many bonds have been issued by State and municipal authorities based upon the assurance of the Secretary of the Treasury that these outstanding bonds will not be taxed.

Mr. PAUL. I would like to have it clear, Mr. Reed, that I do not think the Secretary of the Treasury made any statement to the effect that bonds issued could be eternally exempt from Federal tax.

Mr. REED. I do not claim that he did. I claim this: That in view of the fact that the Supreme Court has held that a moral obligation is a sufficient consideration upon which to base a case in the courts, we should as Members of Congress, acting under an oath of office, give some regard to moral obligation.

Mr. PAUL. I certainly agree with you that we should. It is a question of whether there is a moral obligation under all the facts of this case. I would be the last person to say that we shoud disregard a moral obligation if I believed that one existed.

Mr. REED. Don't you think that when we have run along here over a period of years and have not taxed these municipal bonds, these municipal and State bonds, and people have invested in them, many times for patriotic reasons, many times because of local pride in some project out there—for instance, I know of one community with less than 20,000 people who are going to bond themselves for $50,000 in order to do their part toward building an airport, and the Federal Government to put up the rest. They never in the world in my judgment would pass that bond issue if they thought those bonds were going to be taxed by the Federal Government. And yet they are going ahead on the theory that we never have taxed those obligations in the past. Now, when you start taxing these obligations, you are attacking the borrowing power of the State and municipal authorities.

Mr. PAUL. I do not doubt, Mr. Reed, that a great many people have invested in municipal securities in the manner that you suggest. I also would like to point out, however, that a great many have invested in municipal securities for no such motive at all, but rather simply to avoid their share of the tax burden. And I think that that is very definitely proved by these figures contained in my statement as to the increased amount of these securities in the larger estates.

Mr. REED. But we should not destroy the confidence of the people in the Federal Government because a few have abused this privilege.

Mr. PAUL. I do not think it is a few. I am sorry to say that I do not think it is a few that have. Neither do I want to say that it is necessarily an abuse. As long as there is that provision in the statute I do not blame anybody for buying municipal bonds.

Mr. REED. In some cases, for instance, in a community they were ambitious to go ahead. It may be that some very selfish persons may have put themselves in the light of patriotically minded individuals by taking over a large number of these bonds in that locality which might not be readily salable on the market. They may take them over. Nevertheless, the community benefits by that operation when they come to selling these bonds.

Mr. PAUL. I tried to show that in the average case there is a very small interest differential.

Mr. REED. I do not think that that answers the question. I think that if you adopt this principle and make it possible for the Federal Government to step in and practically destroy the borrowing power of a State or a municipality, you are then simply destroying the sovereignty of the States.

Mr. PAUL. I do not think we would be destroying the borrowing power. I am sorry to disagree with you there, but it seems to me quite clear that we would not.

Mr. REED. Let me say, impair the borrowing power. You saw what happened to the bond market after the speech of the Secretary of the Treasury at Cleveland, did you not?

Mr. PAUL. I do not know just what happened to the bond market after that speech. But one may make an analogy with our own Federal situation. We certainly have not destroyed our own borrowing power by removing the exemption from Federal bonds.

Mr. REED. No; but you see what you are doing now to the borrowing power. You had an exhibition here this morning of high-pressure salesmanship. You call it voluntary, but I have had too much experience in that line in the World War. That is a beautiful set-up. It is a perfect piece of work as campaign literature goes and as campaign pressure goes. But when we call it voluntary, I certainly cannot imagine anything short of a bombshell that would compare to the pressure that is put on them to buy the bonds. And they ought to buy them. That is all right. I am not criticizing that at all. We have to sell those bonds in order to win this war.

But I would like to know what would have happened to the development of our cities and our States if this idea of taxing municipal securities and State securities had been invoked, say, for the last 75 years.

Mr. PAUL. That is a prettty big question, but I think that our cities and States would not have suffered had we had the rule that we now propose.

Mr. REED. They had that immunity taken off during the Civil War so that they could tax those securities; did they not?

Mr. PAUL. I think they did tax the securities at that time. What was that date?

Mr. REED. The 10th of October, that we had an income tax. The reason that we didn't do it then was because the Court at that time would not permit us to.

Mr. TARLEAU. That was in 1894.

Mr. PAUL. The whole question of the ability to impose this kind of tax arose by virtue of the Pollock decision about 1895 or something like that. I think during the Civil War the income-tax law did tax incomes from State and municipal securities.

Mr. REED. I can see in this, if it goes on as it has and there is no restriction on it—I do not know just how long this is going on or how far we are going—but just as sure as this philosophy is adopted in this tax bill, you are just headed for a straight out-and-out central government, with central taxing power, that will collect all of the taxes eventually and then allocate them to the States; and they will allocate them on the basis of "You do thus and so." That is exactly where you are heading, and I do not agree with the philosophy that we are an indissoluble union of indestructible States if this goes through.

Mr. TREADWAY. Mr. Paul, I hesitate to get into a discussion on constitutional questions from the standpoint of being just a very small country businessman besides my membership up here. But isn't there a case pending before the Tax Appeals Board that is likely to go to the Supreme Court that will decide this whole question?

Mr. PAUL. There is a case, a test case.

Mr. TREADWAY. Brought by the Treasury itself?

Mr. PAUL. That is correct, and I believe that it is now pending before the Board.

Mr. TREADWAY. Before the Board?

Mr. PAUL. That is right.

Mr. TREADWAY. But there has to be a decision rendered there before it gets to the Supreme Court. There has to be a decision of the Board of Tax Appeals before it can get to the Supreme Court?

Mr. PAUL. That is right. That is the idea of bringing the case before the Board.

Mr. TREADWAY. Why bring the question up here at this time when, if we wait for the decision, we will have something definite to go by one way or the other? We are going to find out from the Supreme Court that the position that you now take is constitutional, or you are going to be told that it is not constitutional. Why ask Congress to enact something that is so definitely uncertain as to its constitutionality in advance when such a decision is sure to come?

Mr. PAUL. Mr. Treadway, I do not want to get into a long discussion of the precise case——

Mr. TREADWAY. We have been having a long discussion all afternoon here.

Mr. PAUL. I know it. But that case that you have mentioned involves the taxation of certain bonds of the New York Port Authority.

Answering your question, "Why don't we wait?", my answer is that we cannot get a decision on the constitutionality of taxing State and municipal bonds unless we pass a statute. The Supreme Court does not take up moot questions.

Mr. TREADWAY. I do not know the procedure accurately; but isn't this true? You say that that case is before the Board of Tax Appeals as to the constitutionality of the taxation of the Port of New York Authority bonds?

Mr. PAUL. But, as I understand it, Mr. Treadway, that involves a slightly different question. That involves the question of whether these particular bonds are within the present statutory exemption.

Mr. TREADWAY. Whether the Treasury wins the decision in that case or whether the other side wins it, that subject, which is the subject now before us here in the broad sense, is going to the Supreme Court; is it not?

Mr. PAUL. That is true. But it is only in the very broadest sense that that may be said.

Mr. TREADWAY. It seems to me that it would save Congress a great deal of trouble and save the people in the Treasury a tremendous amount of trouble when the cases are so nearly parallel, and it seems to me it would be the better part of wisdom on your part not to press this subject matter here before Congress today and get a decision before that question actually goes to the Supreme Court.

Mr. PAUL. I am informed that the decision in that particular case may be such as to throw no light on this question.

Mr. TREADWAY. You are surmising something. There is no certainty about that being the case. But the parallel exists between what you are endeavoring to have Congress do and the possible decision.

When we get that decision, we will have something affirmative one way or the other, either with the Treasury or against it. And I think that it is very inopportune to bring this question up at this time while awaiting that decision.

I think another thing. I am inclined to think that one reason why this question is before us today is that you want to get this enacted into law by Congress before the Supreme Court passes on the question, because then you can say to them, "Gentlemen, here is the attitude of Congress." Of course that has weight. I am told that even testimony submitted to a committee and remarks made on the floor of Congress have a certain amount of bearing on the Supreme Court decisions.

Mr. PAUL. That would have a bearing on the interpretation of a statute, yes; but I do not think it would have any bearing in connection with a constitutional issue of this kind.

Mr. TREADWAY. I cannot see the difference between the case pending, that you admit yourself is there, and the relationship that it bears to the case before us now.

That is all.

Mr. REED. Mr. Chairman, I would like to introduce a document.

The CHAIRMAN. Without objection, that will be done.

Mr. REED. The document that I refer to is entitled "Power of Congress to Tax the Interest From State and Local Securities and the Compensation of State and Local Employees," a report to the Joint Committee on Internal Revenue Taxation by its staff pursuant to section 1203, Revenue Act of 1926. It was published in 1939. I merely want to put in pages 1 to 35.

The CHAIRMAN. Without objection, that may be put in the record.

(The document referred to is as follows:)

POWER OF CONGRESS TO TAX THE INTEREST FROM STATE AND LOCAL SECURITIES AND THE COMPENSATION OF STATE AND LOCAL EMPLOYEES

SUMMARY

This study will consider four aspects of the question of tax exempt income. These are as follows:

PART I. WHETHER THE CONGRESS HAS THE POWER TO APPLY THE FEDERAL INCOME TAX DIRECTLY TO THE INTEREST ON STATE AND LOCAL SECURITIES

It is the opinion of this office that a constitutional amendment is the only effective way by which the Federal income tax may be applied to this interest.

* * * * * * *

PART III. WHETHER THE RECIPROCAL OR MUTUAL TAXATION PLAN WOULD PROVE EFFECTIVE

The basis of this plan is a waiver on the part of the Federal Government of the immunity of Federal bondholders, officers, and employees. There are several vital points incident to the plan that should be kept in mind. The first of these is the lack of assurance that the States may feel toward the possibility that a future Congress may not feel bound to continue the waiver but may rescind it at any time; that is, that the removal of the immunity, being granted by a Federal statute and not through a compact entered into between the Federal Government and the States, would be subject to change at the will of Congress.

Secondly, the plan may work unfairly toward the Federal Government itself if it can be presumed that the waiver, once granted, could not be withdrawn. There would be no corresponding waiver by the States, and the Federal Government would be taking the serious chance of relinquishing its own immunity and securing in return only such breadth of taxing power with respect to the State and local governments as the court might see fit to allow.

Moreover, as the taxing powers of the Federal Government and the States rest on an entirely different basis, and as the rates and tax structures of those units are very dissimilar, it is felt that such a plan could never be truly reciprocal or mutual.

PART IV. WHETHER CONGRESS HAS THE POWER TO TAX THESE SUBJECTS BY OTHER METHODS

Among these methods of reaching tax-exempt interest are:

(1) The taxation, by each level of government, of subsequent issues of its own securities;

(2) The adding of the tax-exempt income to the taxable income for the purpose of determining the rate which would be applicable only to the taxable income;

(3) The entering into a series of mutual compacts or agreements between the Federal Government and the individual States by which each level would be permitted to tax the interest from the securities of the other;

(4) The imposition of an excise tax, based on the exercise of a privilege and measured by net income from all sources;

(5) The subjecting of tax-exempt securities to a higher estate tax than would be applicable to other property, on the theory that such securities had escaped the income tax; and

(6) The adoption of a constitutional amendment.

With regard to each of these methods except the last, there are serious technical and legal difficulties that render them incapable of providing a satisfactory solution to the problem.

With respect to the Federal taxation of the salaries of State and local employees, recent decisions of the Supreme Court have substantially broadened the Federal power. In addition, existing law taxes such compensation to the full extent allowed by the Constitution. However, it is the opinion of this office that an amendment to the Constitution provides the only way in which the compensation of all State and local officers and employees may be effectively subjected to the Federal income tax.

PART I. WHETHER THE CONGRESS HAS THE POWER TO APPLY THE FEDERAL INCOME TAX DIRECTLY TO THE INTEREST ON STATE AND LOCAL BONDS

In consideration of this question, an exhaustive study was made by the Department of Justice in June of 1938. The conclusion reached in that study is that "the Congress apparently has the power, under the present trend of decisions to tax the net income arising from the interest paid on State bonds." With this conclusion, we are unable to agree.

In treating this question, the subject will be divided into two subparts, following, in this respect, the same line of approach as that contained in the Department of Justice study.

Subpart A will deal with the question independently of the Sixteenth amendment, and subpart B will deal with the question as affected by the sixteenth amendment.

SUBPART A. POWER INDEPENDENT OF THE SIXTEENTH AMENDMENT

(1) No express prohibition

There is no provision in the Federal Constitution expressly prohibiting the Federal Government from taxing the obligations or the interest therefrom of a State or political subdivision. This prohibition is implied from the independence of the National and State Governments within their respective spheres and from the provisions of the Constitution looking toward the maintenance of our dual system of government; and was developed through judicial interpretation of the Constitution. The doctrine was first applied to limit State interference with Federal functions, and then extended to limit the Federal Government from interfering with State functions.

(2) Development of implied immunity doctrine

(a) *Weston case.*—In the case of *Weston* v. *Charleston*,[1] the Supreme Court held invalid an ordinance of the City Council of Charleston subjecting to taxation "all personal estate, consisting of bonds, notes, insurance stock, 6- and 7-percent stock of the United States, or other obligations upon which interest has been or will be received during the year, over and above the interest which has been paid (funded stock of this State, and stock of the incorporated banks of this State and the United States bank excepted), 25 cents upon every $100."

Weston owned some of the 6-to-7-percent stock of the United States and claimed that so far as such stock was concerned, the ordinance violated the Constitution of the United States. The majority of the highest court in the State of South Carolina thought this tax was an income tax and held that it was no invalid as applied to the United States stock. The Supreme Court of the United States, in an opinion by Chief Justice Marshall, overruled the State court and held the tax invalid. In this connection, the Court said:

"Congress has power 'to borrow money on the credit of the United States.' The stock it issues is the evidence of a debt created by the exercise of this power. The tax in question is a tax upon the contract subsisting between the Government and the individual. It bears directly upon that contract, while subsisting and in full force. The power operates upon the contract the instant it is framed, and must imply a right to affect that contract."

And the Court went on to state:

"* * * The right to tax the contract to any extent, when made, must operate upon the power to borrow, before it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government; to any extent, however inconsiderable, it is a burden on the operations of the Government. It may be carried to an extent which shall arrest them entirely."

Chief Justice Marshall did not rest his opinion upon the conclusion that this tax was not an income tax. He states "that the tax was a tax upon the contract subsisting between the Government and the individual." The promise to pay interest is an essential part of the contract with the Government. Therefore, to tax the interest is not any less a tax on the contract than a tax on the stock itself. For these reasons, we are unable to conclude that the opinion of Chief Justice Marshall can be regarded as holding that the tax was not an income tax, but a

[1] 2 Peters 449.

property tax. In fact, this tax has been referred to by the Court on several occasions as an income tax and not as a property tax. In the *Pollock case*, Mr. Justice Fuller, in writing the majority opinion, held it to be an income tax. In *Hale* v. *State Board of Assessment and Review*,[2] decided November 8, 1937, Mr. Justice Cardozo, in distinguishing between a tax on the bonds and the inclusion of the income from the bonds in a general income tax, said:

"Nothing in this opinion is at war with *Weston* v. *Charleston* (2 Pet. 449) or other cases declaring the immunities of governmental agencies. In the case cited and its congeners the problem for decision was whether a tax upon income, even though not a property tax in strictness or for every purpose, was one in such a sense or in such a measure as to hamper the freedom of the Central Government through the interference of the States or the freedom of the States through the interference of the Central Government. The limitations declared in those decisions were gathered by implication from the structure of our Federal system, and were accommodated, as the Court believed, to the public policy at stake."

Even if the *Weston case* can be regarded as preventing the States from levying an income tax on the income from Federal securities, it did not settle the question as to whether or not the Federal Government could tax the income from State and local securities in the form of a general net income tax.

(b) *First Pollock Case.*[3]—That question was not decided until the *Pollock cases* holding the income-tax provisions of the act of 1894 unconstitutional. The income-tax provisions of the act of 1894 in imposing a general tax on net income, included as income interest from State and local bonds.

In the first *Pollock case*,[3] Pollock, a stockholder of the Farmers' Loan & Trust Co., filed a bill in equity to prevent the Trust Co. from making returns and paying income taxes under the act of 1894. The records showed that the net income of the company during the year ended December 31, 1894, amounted to over $300,000; that it derived rental of $50,000 from its real estate, after deducting State and local taxes, and an income of about $60,000 from investments in municipal bonds. The following contentions were made as to the unconstitutionality of the act:

1. The law in imposing a tax on the income or rents of real estate imposed a tax upon the real estate itself and, therefore, such a tax was a direct tax and void because imposed without regard to the rule of apportionment.
2. The law in imposing a tax on the interest or other income of bonds or other personal property is a tax upon the personal estate itself and is, therefore, a direct tax and void because imposed without regard to the rule of apportionment.
3. Because the tax on the income from real property and personal property is void, the whole law is invalidated.
4. The law is invalid because imposing indirect taxes in violation of the constitutional requirement of uniformity.
5. The law is invalid so far as imposing a tax upon income received from State and municipal bonds is concerned.

The Court, in a majority opinion by Mr. Justice Fuller, passed upon only two of the contentions raised in the case. It held the income tax provisions unconstitutional insofar as they taxed the rents and income of the real estate and the income from municipal bonds. It did not pass upon the question as to whether a tax on the income from personal property was a direct tax and, therefore, void because of want of apportionment. The decision of the Court in regard to the inability of the Federal Government to levy a tax on the income from municipal bonds, was unanimous. There were eight justices sitting in this case. However, there were two dissents, one by Mr. Justice White and the other by Mr. Justice Harlan, but these justices dissented from the majority opinion only insofar as it held that a tax on the rents or income from real property was a direct tax. While the justices were equally divided as to whether the income from personal property was a direct tax, and therefore, rendered no opinion as to this question, they were in entire agreement that Congress had no power to tax the income from State or local bonds. In this connection, Mr. Justice Fuller, in speaking for the majority, said:

[2] 302 U. S. 95.
[3] 157 U. S. 429.

"The law under consideration provides 'that nothing herein contained shall apply to States, counties, or municipalities.' It is contended that although the property or revenues of the States or their instrumentalities cannot be taxed, nevertheless the income derived from State, county, and municipal securities can be taxed. But we think the same want of power to tax the property or revenues of the States or their instrumentalities exists in relation to a tax on the income from their securities, and for the same reason, and that reason is given by Chief Justice Marshall in *Weston* v. *Charleston* (2 Pet. 449, 468), where he said: 'The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government. To any extent, however inconsiderable, it is a burthen on the operations of government. It may be carried to an extent which shall arrest them entirely. * * * The tax on Government stock is thought by this court to be a tax on the contract, and tax on the power to borrow money on the credit of the United States, and consequently to be repugnant to the Constitution.' Applying this language to these municipal securities, it is obvious that taxation on the interest therefrom would operate on the power to borrow before it is exercised, and would have a sensible influence on the contract, and that the tax in question is a tax on the power of the States and their instrumentalities to borrow money and consequently repugnant to the Constitution."

In other words, entirely independent of the question of whether a tax on the income from personal property was a direct tax, it was held that the general net income tax insofar as it applied to the income from State or municipal bonds was a tax on the power of the States and their instrumentalities to borrow money and consequently repugnant to the Constitution. With this view, both Mr. Justice White and Mr. Justice Harlan agreed, Mr. Justice White stating:

"In regard to the right to include in an income tax the interest upon the bonds of municipal corporations, I think the decisions of this Court, holding that the Federal Government is without power to tax the agencies of the State government, embrace such bonds, and that this settled line of authority is conclusive upon my judgment here. It determines the question that where there is no power to tax for any purpose whatever, no direct or indirect tax can be imposed. The authorities cited in the opinion are decisive of this question. They are relevant to one case and not to the other, because, in the one case there is full power in the Federal Government to tax, the only controversy being whether the tax imposed is direct or indirect; while in the other there is no power whatever in the Federal Government, and, therefore, the levy, whether direct or indirect, is beyond the taxing power."

And Mr. Justice Harlan concurring in the following statement:

"While property, and the gains, profits, and income derived from property, belonging to private corporations and individuals, are subjects of taxation for the purpose of paying the debts and providing for the common defense and the general welfare of the United States, the instrumentalities employed by the States in execution of their powers are not subjects of taxation by the General Government, any more than the instrumentalities of the United States are the subjects of taxation by the States; and any tax imposed directly upon interest derived from bonds issued by a municipal corporation for public purposes under the authority of the State whose instrumentality it is, is a burden upon the exercise of the powers of that corporation which only the State creating it may impose. In such a case it is immaterial to inquire whether the tax is, in its nature or by its operation, a direct or an indirect tax; for the instrumentalities of the States—among which, as is well settled, are municipal corporations, exercising powers and holding property for the benefit of the public—are not subjects of national taxation in any form or for any purpose, while the property of private corporations and of individuals is subject to taxation by the General Government for national purposes. So it has been frequently adjudged and the question is no longer an open one in this Court."

(c) *The Second Pollock Case*[1]—After the decision in the *First Pollock* case, the appellant filed a petition for rehearing for the reason that the Court had expressed no opinion in regard to the following contentions:

1. That the act was unconstitutional as to incomes from personal property as laying direct taxes without apportionment.
2. That the void income-tax provisions invalidate the entire income-tax law.
3. That if any part of the income tax is considered a direct tax it is invalid for want of uniformity.

The Attorney General presented a suggestion that if any rehearing were granted it should embrace the whole case. Treating this suggestion as amounting in itself to an application for rehearing, the Court set down both applications to be heard before a full bench, Justice Jackson, who did not participate in the first decision, being present.

Mr. Justice Fuller also delivered the opinion of the Court in this second case.[1] The majority opinion adhered to the opinion that taxes on real estate being indisputably direct taxes, taxes on the rents or income of real estate are equally direct taxes. So far as the taxation of income from State and local bonds were concerned, the Court also adhered to its opinion in the first case, stating:

"We have unanimously held in this case that, so far as this law operates on the receipts from municipal bonds, it cannot be sustained, because it is a tax on the power of the States, and on their instrumentalities to borrow money, and consequently repugnant to the Constitution."

(1) That taxes on the income from personal property are direct taxes; and

(2) That the income tax, so far as it fell on the income of real and personal property, being a direct tax within the meaning of the Constitution, and, therefore, unconstitutional and void because not apportioned, the entire income-tax law, constituting one entire scheme of taxation, was necessarily invalid.

Four Justices dissented from the majority opinion. Mr. Justice Harlan dissented from the majority opinion, except insofar as it related to the income from State bonds. He stated that—

"I am of the opinion that with the exception of capitation and land taxes, and taxes on exports from the States and on the property and instrumentalities of the State, the Government of the Union, in order to pay its debts and provide for the common defense and the general welfare, and under its power to lay and collect taxes, duties, imposts, and excises, may reach, under the rule of uniformity, all property and property rights in whatever State they may be found."

Mr. Justice White dissented in regard to the holding that the income on real and personal property was a direct tax, but agreed with the majority opinion as to the inability of the Congress to tax the income from State or municipal bonds. In this connection, he said:

"I deem it unnecessary to elaborate my reasons for adhering to the views hitherto expressed by me, and content myself with the following statement of points."

Mr. Justice Jackson dissented insofar as the Court held the tax on incomes from real or personal property was a direct tax and agreed with the dissents expressed by Mr. Justice White in the *First Pollock* case.

Mr. Justice Brown dissented as to the holding that the income from real or personal property was a direct tax, but he agreed with the majority that an income tax on municipal bonds was invalid. In this connection, he stated:

"The tax upon the income of municipal bonds falls obviously within the other category, of an indirect tax upon something which Congress has no right to tax at all, and hence is invalid. Here is a question, not of the method of taxation, but of the power to subject the property to taxation in any form. It seems to be that the cases of *Collector* v. *Day* (11 Wall. 113), holding that it is not competent for Congress to impose a tax upon the salary of a judicial officer of a State; *McCulloch* v. *Maryland* (4 Wheat. 316), holding that a State could not impose a tax upon the operation of the Bank of the United States; and *United States* v. *Railroad Co.* (17 Wall. 322), holding that a municipal corporation is a portion of the sovereign power of the State, and is not subject to taxation by Congress upon its municipal revenues; *Wisconsin Central Railroad* v. *Price* (133 U. S. 496), holding that no State has the power to tax the property of the United States within its limits; and *Van Brocklin* v. *Tennessee* (117 U. S. 151), to the same effect, apply mutatis mutandis to the bonds in question, and the tax upon them must, therefore, be invalid."

(d) *Effect of Pollock cases.*—From this discussion, it can be seen that the Court, while not unanimous in its conclusion that a tax on the income from real and personal property was a direct tax and subject to the rule of apportionment, was unanimous in its conclusion that the Congress was without power to levy a tax on the income from State or municipal bonds.

---

[1] 158 U. S. 601.

On the questions upon which the Court had rendered no decision in the first case, it held in the second case—

It appears from these decisions that regardless of whether the income tax on personal property is regarded as a direct or indirect tax, it is void as applied to the income of State and local bonds because it constitutes an interference with the borrowing power of the States. This conclusion is in harmony with the decision of the Supreme Court in *Collector* v. *Day*[5] and *Springer* v. *United States*.[6] It should be noted that in the *Springer case* rendered under the Civil War Acts, the Court upheld the Civil War income tax as applied to the professional earnings of Springer, an attorney at law, as an indirect tax. The tax on such earnings was recognized as an indirect tax, not only in the *Springer case*, but also in the *Pollock cases*, Mr. Justice Fuller stating that an income tax on gains or profits from business privileges, employments, and vocations could be sustained as an excise tax. In spite of the fact that it has always been recognized that a tax on earnings is not a direct tax, but an indirect tax, the Court, in *Collector* v. *Day*,[7] held that the Civil War net income tax was not applicable to the income of a State judicial officer because it interfered with the essential functions necessary to the existence of the State.

The conclusion to be drawn from the cases up to this point is that the income from State or local bonds could not be taxed, because to do so would interfere with the borrowing power of the State.

(*e*) *The National Life Insurance Co. case*.[8]—The Revenue Act of 1913, exempted from the Federal income tax, interest upon the obligations of States or their political subdivisions. This exemption was continued in the Revenue Act of 1921 and subsequent revenue acts, except with respect to the special method provided for the taxation of life insurance companies under the Revenue Acts of 1921, 1924, 1926, and 1928. Prior to the enactment of the Revenue Act of 1921, life-insurance companies were taxable like ordinary corporations. Up to that time, gross income included premium receipts and capital gains. The companies were allowed to deduct the amount paid on policies (except as dividends), and the amount required by law to be added to their reserves. At the annual meeting of life insurance presidents in December 1920, it was stated that the law was unsatisfactory both the companies and to the Government. After much consideration, Congress, upon consultation with the life-insurance companies and with the approval of at least most of them, substituted a new plan for computing their taxes. The new plan defined gross income as the gross amount of income received during the taxable year from interest, dividends, and rents. This definition automatically excluded from taxation any portion of the premiums paid by the policyholders to the company, as well as capital gains. Included within such definition of gross income was interest derived from tax-exempt securities. From the gross income thus arrived at, there were allowed certain deductions:

(1) Interest derived from tax-exempt securities, if any.

(2) A sum equal to 4 percent of the mean of the company's legal reserves diminished by the amount of the tax-exempt interest, and

(3) Other items not important here.

Under this plan a life-insurance company which had an income from State and municipal bonds was not entitled to the full amount of the deduction of 4 percent of the mean of the reserve funds, but was required to reduce this amount by the interest derived from tax-exempt securities. The reason for allowing the deduction of 4 percent of the reserve is that a portion of the interest, dividends, and rents received have to be used each year in maintaining the reserve; that is, added to it on the basis of a certain interest rate varying from 3 percent to 4 percent, according to the statutes of the several States.

There were two contentions in this case:

First, that the life-insurance companies were discriminated against and made to exact payment on account of their tax-exempt securities, and

Second, that the diminution of the ordinary deduction of 4 percent of the mean of the reserves because of interest received, in effect, defeated the exemption guaranteed to the owner.

The Court held that to directly tax the income from the securities amounted to a taxation of the securities themselves and that the United States may not tax State or municipal obligations. It then concluded that "Congress has no power

[5] 11 Wall. 113 (1870).
[6] 102 U. S. 586 (1880).
[7] 11 Wall. 113.
[8] 277 U. S. 508.

purposely and directly to tax State obligations by refusing to their owners deductions allowed to others."

The following example will show how this system results in taxing the interest from State securities:

COMPANY A

Income from taxable sources		$100,000
Income from tax-exempt interest		20,000
Gross income		120,000
Deductions:		
Miscellaneous sources	$10,000	
Tax-exempt interest	20,000	
4 percent of the mean of the reserves less tax-exempt interest	30,000	
		60,000
Net income subject to tax		60,000

COMPANY B

Income from taxable sources		$100,000
Income from tax-exempt interest		0
Gross income		100,000
Deductions:		
Miscellaneous sources	$10,000	
Tax-exempt interest	0	
4 percent of the mean of the reserve	50,000	
		60,000
Net income subject to tax		40,000

It will be seen that under this system a life-insurance company with tax-exempt securities is forced to pay a higher tax by reason of the ownership of such securities. It has been claimed that the National Life decision must be confined to its discriminatory features. However, the absence of discrimination was relied upon by the dissenting Justices in this case to sustain it. A subsequent decision will show that the denial by the full deduction of 4 percent of the mean of the reserve to companies receiving income from tax-exempt securities was because it, in effect, taxed the income from such securities. This plan of taxing life-insurance companies gave them an advantage of tax exemption in the case of premium receipts and capital gains. This distinction is forcibly brought out in the case of *Helvering* v. *Independent Life Insurance Company*.[9] That case also concerned the plan for taxing life-insurance companies, inaugurated in the Revenue Act of 1921. It was pointed out that the Revenue Act of 1921 defines gross income as that received from interests, dividends, and rents. Premiums and capital gains were excluded and the net income was ascertained by making specified deductions from gross income. These deductions included (1) 4 percent of the company's reserve already discussed in the *National Life case*; (2) taxes and other expenses paid during the taxable year exclusively upon or with respect to the real estate owned by the company, and (3) a reasonable allowance for the exhaustion, wear, and tear of property, including a reasonable allowance for obsolescence. This law then provided that the deductions under (2) and (3) should not be allowed on account of any real estate owned and occupied in part by a life-insurance company unless there was included in its return of gross income the rental value of the space so occupied. Such rental value under the law could not be less than a sum which in addition to any rents received from other tenants should provide a net income (after deducting taxes, depreciation, and other expenses) at the rate of 4 percent per annum of the book value at the end of the taxable year of the real estate so owned or occupied.

It was claimed that this limitation on the deductions was unconstitutional because the rental value of the space occupied by the insurance company owning the building was not income, and that the exaction was, therefore, a direct tax on the land itself and void for lack of apportionment. The Court in its opinion specifically held that the rental value of the building used by the owner does not constitute income within the meaning of the sixteenth amendment, but then went on to state:

"Earlier acts taxed life-insurance companies' incomes substantially the same as those of other corporations. Because of the character of the business, that method proved unsatisfactory to the Government and to the companies. The

[9] 292 U. S. 371 (1934).

provisions under consideration were enacted upon the recommendation of representatives of the latter. As rents received for buildings were required to be included in gross and expenses chargeable to them were allowed to be deducted, it is to be inferred that Congress found—as concededly the fact was—that the annual net yields from investments in such buildings ordinarily amounted to at least 4 percent of book value. Where an insurance company owns and occupies the whole of a building, it receives no rents therefor and is not allowed to deduct the expenses chargeable to the buildings. Where part is used by the company and part let, the rents are required to be included in the gross, but expenses may not be deducted unless, if it be necessary, there is added to the rents received an amount to make the total sufficient, after deduction of expenses, to leave 4 percent of book value. All calculations contemplated by section 245 (b) are made subject to that limitation. Congress intended that the rule should apply only where rents exceed such 4 percent. Where they are less than that, addition of the prescribed rental value and deduction of expenses operate to increase taxable income. The classification is not without foundation.

"The company is not required to include in gross any amount to cover rental value of space used by it, but in order that, subject to the specified limitation, it may have the advantage of deducting a part of the expenses chargeable to the building, it is permitted to make calculations by means of such an addition. The statute does not prescribe any basis for the apportionment of expenses between space used by the company and that for which it receives rents. The calculation indicated operates as such an apportionment where the rents received are more than 4 percent of book value, but less than that amount plus expenses. In such cases the addition, called rental value of space occupied by the company, is employed to permit a deduction on account of expenses. That, as is clearly shown in the dissenting opinion, supra, page 473 of 67 F. (2d), is the arithmetical equivalent of lessening the deduction by the amount of the so-called rental values."

The *National Life Insurance Company case* was distinguished on the ground that the effect of the statutory deduction invalidated in that case was to impose a direct tax on the income of exempt securities, whereas the limitation on the deductions discussed in the rental value case was in substance a diminution or apportionment of expenses to be deducted from gross income, and that Congress had the power to condition, limit, or deny deductions. Of course, if the disallowance of the deduction had been regarded as a discrimination against companies owning their own buildings, a different conclusion would have been reached. In other words, in this case, life-insurance companies owning office building and occupying part of them were singled out for special treatment to the same extent that life-insurance companies owning tax-exempt bonds were singled out for special treatment. However, this singling out did not result in discrimination and the provision singling out those with tax-exempt bonds for special treatment was held invalid, not on that account, but on the ground that this special treatment amounted to taxing the income from tax-exempt securities.

(f) *Conclusion from both Pollock cases and National Life Insurance Company case.*—Unless the *Pollock cases* and the *National Life case* have been modified by subsequent decisions, they stand as authority for holding that the Congress has no power to subject the income from State or local securities to a general income tax.

(3) *Analysis of Pollock cases by subsequent decisions*

It is contended that the *Pollock cases* were decided on the theory that a tax on the income of municipal bonds was the equivalent of a tax on the bonds themselves. This contention does not appear to be correct. In the first *Pollock case*[10] the Court did not decide the question as to whether or not the income tax on personal property was a direct tax. Despite this, the Court held that the income tax as applied to municipal bonds was invalid because "the tax in question is a tax on the power of the States and their instrumentalities to borrow money, and consequently repugnant to the Constitution."

In the second *Pollock case*[11] Chief Justice Fuller stated in regard to the first *Pollock case*:

"We have unanimously held in this case that, so far as this law operates on the receipts from municipal bonds, it cannot be sustained because it is a tax on

[10] 157 U. S. 429.
[11] 158 U. S. 601.

the power of the States and on their instrumentalities to borrow money, and consequently repugnant to the Constitution."

Clearly, the decision was not unanimous on the theory that a tax on the income from municipal bonds was a tax on the bonds themselves, for at least four of the judges were unable to conclude, even in the second case, that a tax on the income from personal property was a tax on the property itself.

In *Cohn* v. *Graves*,[12] Mr. Justice Stone, who rendered the majority opinion, pointed out that the decision in the *Pollock case*, so far as it related to a tax on the rents of land, did not rest upon the ground that the tax was a tax on the land or that it was subject to every limitation which the Constitution imposes on property taxes. It determined "only that for purposes of apportionment there was similarities in the operation of the two kinds of tax which made it appropriate to classify both as direct and within the constitutional command." So far as the *Pollock cases* concerned the taxation of income from municipal bonds, Mr. Justice Stone said:

"It is by a parity of reasoning that the immunity of income-producing instrumentalities of one government, State or National, from taxation by the other, has been extended to the income. It was thought that the tax, whether on the instrumentality or on the income produced by it, would equally burden the operations of government."

To the same effect was the conclusion of Mr. Justice Cardozo in rendering the decision in *Hale* v. *State Board*.[13] He stated in referring to the *Cohn* v. *Graves* decision:

"*Pollock* v. *Farmers' Loan & Trust Co.* (157 U. S. 429; 158 U. S. 601), was considered and distinguished. Two rulings emerge as a result of the analysis. By the teaching of the *Pollock case* an income tax on the rents of land (157 U. S. 429) or even on the fruits of other investments (158 U. S. 601) is an impost upon property within the section of the Constitution (art. I, sec. 2, cl. 3) governing the apportionment of direct taxes among the States (300 U. S. at p. 315). By teaching of the same case an income tax, if made to cover the interest on Government bonds, is a clog upon the borrowing power such as was condemned in *McCulloch* v. *Maryland* (4 Wheat. 316), and *Collector* v. *Day* (11 Wall. 113, 124; 300 U. S. at pp. 315, 316). There was no holding that the tax is a property one for every purpose or in every context. We look to all the facts.

"In line with that conception of the *Pollock case* is *Brushaber* v. *Union Pacific R. Co.*, *supra*, where the court pointed out (240 U. S. at pp. 16, 17) that 'the conclusion reached in the *Pollock case* did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property,' but that to the contrary such taxes were enforcible as excises except to the extent that violence might thus be done to the spirit and intent of the rule governing apportionment."

By this analysis, it seems clear that a tax on the income from property was treated as a tax on the property *only for the purposes of applying the rule of apportionment and that a tax on the interest on municipal bonds was condemned as a clog upon the borrowing power of the State.*

(4) *Effect of subsequent decisions on modifying the Pollock cases*

It has not been established that subsequent decisions have weakened the holding in the *Pollock cases* that the Federal Government has no power to tax the income from State or local bonds. The decisions relied upon as distinguishing the *Pollock cases* are summarized as follows:

(a) *Bonaparte* v. *Tax Court*.[14]—In the *Bonaparte case*, the Supreme Court upheld the right of Maryland to levy a property tax on bonds issued by New York, Pennsylvania, and Ohio to one of its own citizens. This case was distinguished in the *Pollock case* itself, as follows:

"The question in *Bonaparte* v. *Tax Court* (104 U. S. 592) was whether the registered public debt of one State, exempt from taxation by that State or actually taxed there, was taxable by another State when owned by a citizen of the latter, and it was held that there was no provision of the Constitution of the United States which prohibited such taxation. The States had not covenanted that this could not be done, whereas, under the fundamental law, as to the power to borrow money, neither the United States, on the one hand, nor the States, on the other,

[12] 300 U. S. 308 (1937).
[13] 302 U. S. 95 (1937).
[14] 104 U. S. 592 (1881).

can interfere with that power as possessed by each and an essential element of the sovereignty of each."

This conclusion is in harmony with the view expressed by the Court in *Burnet v. Brooks*[35] pointing out that the Constitution, through the due-process clause, prevented the States from transcending the limits of their authority, and thus destroying the rights of other States, for it is impossible for one State to reach out and tax property in another State without violating the Constitution, for where the power of one ends, the authority of the other begins. If, therefore, the State of domicile of the owner of the bond could not tax the bond or the income therefrom, no tax could be levied at all, not even by the State which issued the bond, for the reason that it had no jurisdiction over the owner of the bond who resided beyond its borders. Thus the relationship existing between the States themselves and the States and the Federal Government, is not subject to the same constitutional limitations or restrictions.

(b) *Flint v. Stone Tracy Co.*[36]—*Flint v. Stone Tracy Company* does not conflict with the *Pollock cases*. That case construed the corporation excise tax of 1909, which taxed the privilege of carrying on or doing business by corporations. The tax was measured by the net income of the corporation from all sources. Since the subject of the tax was the exercise of a franchise or privilege, the Supreme Court held that Congress had the power to include in the measure of the tax the income from tax-exempt securities, although such income could not be directly taxed. It is claimed that the *Pollock case* apparently rests upon weak foundations if a distinction so refined as that between the subject and the measure of a tax is sufficient to escape its ruling. However, long before the Pollock decisions the Court recognized the distinction between a property tax and a tax on franchises and privileges. The Court has uniformly held a tax upon the capital or the assets of corporations invalid unless the value of Government bonds held by the corporation were deducted. But this ruling is not applied to franchises or privilege taxes where the bonds were not taxed directly, but were used as a measure of the tax. For example, in 1867, long before the *Pollock cases*, the Court upheld a franchise tax measured by deposits, even though some of the deposits were invested in tax-exempt securities (*Society for Savings v. Coite*[37]). A like decision was rendered in *Provident Institution v. Massachusetts*,[38] where the tax was measured by average deposits.

In referring to these cases in the *Stone Tracy Company case*,[39] the Court said:

"It is therefore well settled by the decisions of this court that when the sovereign authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure of taxation is found in the income produced in part from property which of itself considered is nontaxable."

There is, therefore, no more basis for holding that the *Stone Tracy Co. case* permits the income from State or local securities to be taxed directly than for holding that the *Society for Savings and Provident Institution cases* (as well as other cases), permitting nontaxable property to be used as a measure of the tax, authorize the direct taxation of the nontaxable property itself.

The distinction between taxing tax-exempt securities directly or including them as a measure of a privilege tax has also been recognized in inheritance and estate-tax cases.

In *Plummer v. Coler*,[40] the Court permitted New York to collect an inheritance tax upon a bequest of United States bonds. The Court also upheld the Federal estate tax as applied to municipal bonds. But it has never seriously contended that these decisions would permit the taxation of the bonds themselves.

(c) *Peck & Co. v. Lowe*.[41]—In this case a domestic corporation was engaged in buying and selling goods. Its income from shipping goods abroad and selling them amounted to approximately $30,000 and its income from local sources amounted to approximately $12,000. Its total net income was held taxable under the Federal Revenue Act of 1913. The Court held it was not a tax on exportation and, at the most, affected exportation indirectly and remotely. It distinguished this case from a case where a taxpayer might have tax-exempt income by stating that a net income tax, although a general tax, cannot be

[35] 288 U. S. 378 (1933).
[36] 220 U. S. 107 (1911).
[37] 6 Wall. 594 (1867).
[38] 6 Wall. 611 (1867).
[39] 220 U. S. 107.
[40] 178 U. S. 115 (1900).
[41] 247 U. S. 165 (1918).

applied to any income which Congress has no power to tax. It then concluded that if articles manufactured and intended for export are subject to taxation under general laws up to the time they are put in the course of exportation, the conclusion is, therefore, that the net income from the venture when applied, after exportation and sale, is exercised subject to taxation under the general laws and that the status of income is not different from that of the exported article prior to exportation. It will be noted that the facts in this case show that the net income of the taxpayer was not derived exclusively from the shipment and sales of articles abroad.

(d) *United States Glue v. Oak Creek*.[42]—In this case the Supreme Court upheld a State net income tax on a corporation organized under the laws of the State of Wisconsin, having its principal office and place of business in the town of Oak Creek, where it conducted an extensive manufacturing plant, selling its products throughout the State, in other States, and in foreign countries. Its net business income for the particular year amounted to about $124,000. Its business income for the taxable year was derived from sales within the State and some from sales without the State, and some form foreign countries.

The Court upheld the Wisconsin tax as applied to this case, stating that the net income tax was applied to the net proceeds of the plaintiff's business from interstate commerce together with a like tax imposed upon its income derived from other sources, and in the same way that other corporations doing business within the State were taxed upon that proportion of their income derived from business transacted on property located within the State, whatever the nature of their business. This case, like the *Peck & Co. case*, did not involve a situation where the income of the taxpayer was derived solely from interstate commerce. However, in the case of *Curlee Clothing Co. v. Oklahoma*[43] it was held that a foreign corporation doing a purely interstate business was not subject to a State net income tax.

In commenting upon the *U. S. Glue Co. case*, Mr. Justice McReynolds, in writing the majority opinion in *Northwestern Insurance Company v. Wisconsin*,[44] stated:

It is important to observe that although a State statute may properly impose a charge which materially affects interstate commerce, without so unreasonably burdening it as to become a regulation within the meaning of the Constitution, no State can lay any charge on bonds of the United States."

Specifically, the holding of the Court in the *United States Glue Company case* was that the net income tax imposed by Wisconsin was not deemed to so directly burden the plaintiff's interstate business as to amount to a regulation of commerce among the States.

(e) *Willcutts v. Bunn*.[45]—In this case, the Supreme Court upheld the right of the Federal Government to subject to the Federal income tax gains from the sale of county and municipal bonds. The *Pollock case* was cited with approval, the Court stated:

"In the case of the obligations of a State or of its political subdivisions, the subject held to be exempt from Federal taxation is the principal and interest of the obligations. These obligations constitute the contract made by the State, or by its political agency pursuant to its authority, and a tax upon the amounts payable by the terms of the contract has therefore been regarded as bearing directly upon the exercise of the borrowing power of the Government."

The Court distinguished a tax upon the interest from a bond from a tax upon the profits derived from the sale of a bond, in the following language:

"The tax upon interest is levied upon the return which comes to the owner of the security according to the provisions of the obligation and without any further transaction on his part. The tax falls upon the owner by virtue of the mere fact of ownership, regardless of use or disposition of the security. The tax upon profits made upon purchases and sales is an excise upon the result of the combination of several factors, including capital investment and quite generally, some measure of sagacity; the gain may be regarded as the creation of capital, industry, and skill."

In other words, the capital gain arose from a transaction separate and distinct from the transaction with the Government and was created by the taxpayer

[42] 247 U. S. 321 (1918).
[43] 58 F. 2d 534 (1932).
[44] 275 U. S. 136.
[45] 282 U. S. 216 (1931).

himself, separate and apart from his contract with the Government.

The Court concluded that the burden upon the States' borrowing power by taxing such capital gain was not real or substantial.

(*f*) *Denman* v. *Slayton.*—In this case, the Supreme Court upheld a provision of the Revenue Act of 1921 defining a deduction for interest paid or accrued on indebtedness incurred or continued to purchase or carry tax-exempt securities. The provision was upheld as necessary to prevent the escape from taxation of income properly subject thereto by purchase of exempt securities with borrowed money.

In other words, the taxpayer was not permitted to reduce his taxable income by interest on money borrowed to acquire tax-exempt securities. The Court pointed out that this did not amount to the taxation of the interest from the tax-exempt securities. The *National Life* case was distinguished as follows:

"* * * The circumstances disclosed in *National Life Ins. Co.* v. *United States* were radically different from those now presented, and the doctrine upon which that cause turned does not control the present one. The respondent here was not in effect required to pay more upon his taxable receipts than was demanded of others who enjoyed like incomes solely because he was the recipient of interest from tax-free securities—a result which we found would have followed enforcement of the literal provisions of section 245 (a), Revenue Act 1921, 42 Stat. 227, 261. While guaranteed exemptions must be strictly observed, this obligation is not inconsistent with reasonable classification designed to subject all to the payment of their just share of a burden fairly imposed.

"The manifest purpose of the exception in paragraph 2, section 214 (a), was to prevent the escape from taxation of income properly subject thereto by the purchase of exempt securities with borrowed money.

"Under the theory of the respondent, 'A,' with an income of $10,000 arising from nonexempt securities, by the simple expedient of purchasing exempt ones with borrowed funds and paying $10,000 interest thereon, would escape all taxation upon receipts from both sources. It was proper to make provision to prevent such a possibility. The classification complained of is not arbitrary, makes no improper discrimination, does not result in defeating any guaranteed exemption, and was within the power of Congress. The fact that respondent engaged in the business of buying and selling is not important. See *Willcuts* v. *Bunn*, *ante*, page 216."

(*g*) *Helvering* v. *Independent Life Insurance Co.*—This case has been discussed and distinguished in connection with the *National Life Insurance Company case.*

(*h*) *Cohn* v. *Graves.*—The reasons of the *Pollock case* has not been rejected in the above cited case. In that case, the Court held that the State of New York may tax her citizen upon income he received from land situated in another State and from interest on bonds secured by a mortgage on land situated in another State. It was stated that the incidence of a tax on income differs from a tax on property. Neither tax being dependent upon the possession by the taxpayer of the subject of the other.

The *Pollock case* was distinguished from this situation as follows:

"Nothing which was said or decided in *Pollock* v. *Farmers Loan & Trust Co.* (157 U. S. 429), calls for a different conclusion. There the question for decision was whether a Federal tax on income derived from rents of land is a direct tax requiring apportionment under article I, section 2, clause 3 of the Constitution. In holding that the tax was 'direct,' the Court did not rest its decision upon the ground that the tax was a tax on the land, or that it was subject to every limitation which the Constitution imposes on property taxes. It determined only that for purposes of apportionment there were similarities in the operation of the two kinds of tax which made it appropriate to classify both as direct, and within the constitutional command. See *Pollock* v. *Farmers Loan & Trust Co., supra*, pp. 580, 581; *Brushaber* v. *Union Pacific R. Co.* (240 U. S. 1, 16). And in *Union Transit Refrigerator Co.* v. *Kentucky* (199 U. S. 194, 204), decided 10 years after the *Pollock case*, the present question was thought not to be foreclosed.

"It is by a parity of reasoning that the immunity of income-producing instrumentalities of one government, State or National, from taxation by the other

282 U. S. 514 (1931).
292 U. S. 371.
277 U. S. 508.
300 U. S. 308 (1937).

has been extended to the income. It was thought that the tax, whether on the instrumentality or on the income produced by it, would equally burden the operations of Government. See *Collector* v. *Day* (11 Wall. 113, 124); *Pollock* v. *Farmers Loan & Trust Co., supra*, 583; *Gillespie* v. *Oklahoma* (257 U. S. 501). But as we have seen, it does not follow that a tax on land and a tax on income derived from it are identical in their incidence or rest upon the same basis of taxing power, which are controlling factors in determining whether either tax infringes due process."

(*i*) *Hale* v. *State Board.*—Nothing in the above-mentioned case is in conflict with the *Pollock case.* In that case, Iowa enacted a law exempting its municipal and State bonds from taxation. Subsequently, it passed for the first time a tax on the net income of residents in the State, and the interest derived from such bonds was included in an assessment made against the bondholders. The State court interpreted the exemption from taxation as only applying to taxes laid on property in proportion to its value, and not as touching taxes in the nature of an excise upon net income of the owner. The Supreme Court in an opinion by Mr. Justice Cardozo, upheld the tax, stating:

"* * * *Pollock* v. *Farmers' Loan & Trust Co.* (157 U. S. 429; 158 U. S. 601), was considered and distinguished. Two rulings emerge as a result of the analysis. By the teaching of the *Pollock case* an income tax on the rents of land (157 U. S. 429) or even on the fruits of other investments (158 U. S. 601) is an impost upon property within the section of the Constitution (art. I, sec. 2, cl. 3) governing the apportionment of direct taxes among the States (300 U. S., at p. 315). By the teaching of the same case an income tax, if made to cover the interest on Government bonds, is a clog upon the borrowing power such as was condemned in *McCulloch* v. *Maryland*, 4 Wheat. 316, and *Collector* v. *Day*, 11 Wall. 113, 124 (300 U. S., at pp. 315, 316). There was no holding that the tax is a property one for every purpose or in every context. We look to all the facts.

"In line with that conception of the *Pollock case* is *Brushaber* v. *Union Pacific R. Co., supra*, where the Court pointed out (240 U. S., at pp. 16, 17) that 'the conclusion reached in the *Pollock case* did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property,' but that to the contrary, such taxes were enforceable as excises except to the extent that violence might thus be done to the spirit and intent of the rule governing apportionment.

"* * * Nothing in this opinion is at war with *Weston* v. *Charleston* (2 Pet. 449), or other cases declaring the immunities of governmental agencies. In the case cited and its congeners the problem for decision was whether a tax upon income, even though not a property tax in strictness or for every purpose, was one in such a sense or in such a measure as to hamper the freedom of the Central Government through the interference of the States or the freedom of the States through the interference of the Central Government. The limitations declared in those decisions were gathered by implication from the structure of our Federal system, and were accommodated, as the court believed, to the public policy at stake. What the Court is now concerned with, however, is not the preservation or protection of any governmental function. Iowa cannot be held to cripple in an unconstitutional way her own privileges and powers when she levies an income or even a property tax upon bonds issued by herself. The Court is now concerned with the meaning and effect of particular contracts of exemption to be read narrowly and strictly. There is no room at such a time for the freer and broader methods that have been thought to be appropriate in the development of the doctrine of implied restraints."

(*j*) *James* v. *Dravo Contracting Company.*—This case upheld a 3-percent gross receipts tax imposed by the State of West Virginia upon gross receipts received by an independent contractor for work performed for the Federal Government in West Virginia. This case was clearly distinguished from the bondholder case. Mr. Chief Justice Hughes in the majority opinion, stating:

"There is no ineluctable logic which makes the doctrine of immunity with respect to Government bonds applicable to the earnings of an independent contractor rendering services to the Government. That doctrine recognizes the direct effect of a tax which 'would operate on the power to borrow before it is exercised' (*Pollock* v. *Farmers Loan & Trust Co., supra*) and which would directly affect the Government's obligation as a continuing security.

302 U. S. 95 (1937).
302 U. S. 134 (1938).

Vital considerations are there involved respecting the permanent relations of the Government to investors in its securities and its ability to maintain its credit—considerations which are not found in connection with contracts made from time to time for the services of independent contractors."

There are also other features involved in the *Graves case* which distinguish it from a Federal tax on State bonds or employees. In this case, the Federal Government, although not a party to the proceeding, interceded and informed the Court that the Federal Government did not regard the collection of such a tax as an interference with its governmental functions.

In this connection, the Court said:

spondent's right is at best a derivative one. He asserts an immunity which, local taxation and the mere fact that the tax in question burdens respondent is no defense. The defense is that tax burdens the Government and respondent's right is at best a derivative one. He asserts an immunity which, if it exists, pertains to the Government and which the Government disclaims."

Of course, in the case of an action by the Federal Government to collect an income tax from a State bondholder, we cannot rely upon the proposition that the State will disclaim that the levying of such a tax interferes with its borrowing powers.

Another point which distinguished the two classes of cases is brought out in the following quotation from the majority opinion:

"There is the further suggestion that if the present tax of 2 percent is upheld, the State may lay a tax of 25 percent or 50 percent or even more, and make it difficult or impossible for the Government to obtain the service it needs. The argument ignores the power of Congress to protect the performance of the functions of the National Government and to prevent interference therewith through any attempted State action. In *Thomson* v. *Pacific Railroad*, *supra*, the Court pointedly referred to the authority of Congress to prevent such an interference through the use of the taxing power of the State."

This indicates that the Court was of the opinion that if a State should lay a tax, even though nondiscriminatory, which would make it difficult or impossible for the Federal Government to obtain the service it needed, the Federal Government still had a remedy. This remedy from the Court's reference to the case of *Thomson* v. *Pacific Railroad Company* appears to be by means of legislation preventing the State tax from applying. But the States would have no corresponding remedy to prevent a nondiscriminatory Federal tax from burdening their functions to obtain services or borrow money, for the Federal law, being the supreme law of the land, would override any State law exempting such activities from the Federal tax. The sole protection of the States in a matter of this kind, is the Constitution.

(*k*) *Helvering* v. *Mountain Producers Corporation.*—In the above cited case, it was held that the income received from a State lease by a lessee from the sale of his share of oil produced was subject to the Federal income tax. The Court overruled certain former cases in reaching this conclusion, stating:

"* * * These decisions in a variety of applications enforce what we deem to be the controlling view—that immunity from nondiscriminatory taxation sought by a private person for his property or gains because he is engaged in operations under a Government contract or lease cannot be supported by merely theoretical conceptions of interference with the functions of government. Regard must be had to substance and direct effects. And, where it merely appears that one operating under a Government contract or lease is subject to a tax with respect to his profits on the same basis as others who are engaged in similar businesses, there is no sufficient ground for holding that the effect upon the Government is other than indirect and remote. We are convinced that the rulings in *Gillespie* v. *Oklahoma*, *supra*, and *Burnet* v. *Coronado Oil & Gas Company*, *supra*, are out of harmony with correct principle and accordingly they should be, and they now are overruled."

But, in reaching this conclusion, the Court distinguished this situation from the *Pollock cases*, as follows:

"* * * While a tax on the interest payable on State and municipal bonds has been held to be invalid as a tax bearing directly upon the exercise of the borrowing power of the Government (*Weston* v. *Charleston*, 2 Pet. 449, 468, 469, 7 L. Ed. 481; *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429, 586,

9 Wall. 579.
303 U. S. 376.

15 S. Ct. 673, 39 L. Ed. 759), the sale of the bonds by their owners after they have been issued by the State or municipality is regarded as a transaction distinct from the contracts made by the Government in the bonds themselves and the profits of such sales are subject to the Federal income tax."

In other words, the income in this case, arose from transactions separate and distinct from contracts made with the Government. Therefore, they are clearly distinguishable from the above case where the interest is received as a part of the contract with the Government.

(*l*) *Helvering* v. *Gerhardt.*—This case held that the Federal income tax as applied to the salaries of employees of the Port Authority, a bi-State corporation created by compact between New York and New Jersey, was valid on the theory that the tax neither precluded nor threatened unreasonably to obstruct any function essential to the continued existence of the State government. In that case, the Court distinguished this situation from taxing the income from State bonds, stating that the immunity doctrine was applied where the function involved was thought to be essential to the maintenance of a State government, as where the intent was "to tax income received by a private investor from State bonds, and thus threaten impairment of the borrowing power of the State, *Pollock* v. *Farmers' Loan & Trust Company* (157 U. S. 429; cf.); *Weston* v. *Charleston*, *supra* (465, 466).

(*m*) *Allen* v. *Regents of the University System of Georgia* (*May 23, 1938*).—This case upheld the right of the Federal Government to collect an admissions tax on admissions charged by the University of Georgia to its athletic contests. The Court pointed out that, although the university was an instrumentality of the State of Georgia, if the State embarks on a business which would normally be taxable, the fact that in so doing it is exercising a governmental power, does not itself render the activity immune from Federal taxation. In this connection, the Court stated:

"Under the test laid down in *Helvering* v. *Gerhardt*, *ante* (p. 405), however, essential a system of public education to the existence of the State, the conduct of exhibition for admissions paid by the public is not such a function of State government as to be free from the burden of a nondiscriminatory tax laid on all admissions to public exhibitions for which an admission fee is charged."

Mr. Justice Black concurred in the opinion "except insofar as it approves the reasoning of the Court on the question of State immunity from interference by Federal taxation." It will be noted that the reasoning of the Court recognizes that there are certain functions of State government which are free from the burden of a nondiscriminatory tax, and in the *Gerhardt* case pointed out that one of these functions was the power of the State to borrow money and that the taxation of income received by a private investor from State bonds threatened impairment of such function.

SUBPART B. POWER AS AFFECTED BY THE SIXTEENTH AMENDMENT

(1) Legislative history

The sixteenth amendment to the Constitution, which became effective February 25, 1913, provides as follows:

"The Congress shall have power to lay and collect taxes on income, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

The Supreme Court has held that this language does not extend the Federal taxing power to new objects and does not give the Congress authority to tax income which before the ratification of the amendment was beyond its powers. It was decided that the purpose of the amendment was to remove the necessity of apportioning such income taxes as are direct; and further, that the amendment is not to be extended beyond the meaning clearly indicated by the language used.

Nevertheless the meaning of the phrase "from whatever source derived" has furnished grounds for continued controversy and debate. It must be admitted by the most persevering protagonists that there is a possible basis for two interpretations of this language; the first, that it was intended by those proposing and ratifying the amendment that these words would bring within the Federal taxing

304 U. S. —— (May 16, 1938).
304 U. S. —— (May 23, 1938).

power all incomes from every source, including interest on State and local securities, and the second, that the language was intended simply to remove the apportionment requirement with respect to income arising from property, a tax upon which was a "direct" tax under the decision in the *Pollock case*.

A study of the history of the amendment discloses numerous arguments upholding each position—from the time the amendment was first proposed eminent lawyers and brilliant legal minds have differed as to the proper interpretation of the debated phrase. It is extremely difficult to weigh even the approximate effect these pro and con arguments had upon the minds of those proposing and ratifying the amendment.

The outstanding events in the legislative history of the amendment may be briefly related. By 1909, the popularity of the income tax had grown to the point where it could no longer be denied. The attempt made in the act of 1894 to levy such a tax had met with general approval and the Pollock decision, rendering that act ineffective, created widespread resentment. After the *Pollock case* there arose a demand that the necessary steps be taken to overcome the effect of this decision, which clearly meant the adoption of a constitutional amendment.

In the *Pollock case* income had been divided into three general classes: The first, composed of income from property; the second, of interest upon bonds of State and local governments; and the third, of income from all other sources (the question of salaries of State and local officers and employees was not before the Court).

With regard to income of the first class, the Court found that a tax thereon was a "direct" tax for the purposes of the constitutional requirement that direct taxes must be apportioned in accordance with the census or enumeration. Upon this point the Court was divided, the majority being five Justices, while four dissented. Upon the question of the power of the Federal Government to tax the interest from State and local securities the Court found that this was "a tax upon the power of the States and their instrumentalities to borrow money, and consequently repugnant to the Constitution." As to this point the decision of the Court was unanimous.

The date of the Pollock decision was April 8, 1895. From that date to 1909 there was an ever-increasing growth of public opinion favorable to the income tax. Agitation became acute and the demands were so insistent that when a special session of the Congress was called in 1909 to consider the subject of tariff revision it soon developed that the question of an effective income tax and a constitutional amendment was uppermost in the legislative mind. Proposed amendments in several forms were presented. On April 27, 1909, Senator Brown, of Nebraska, introduced one providing that "The Congress shall have power to lay and collect taxes on incomes and inheritances." He apparently became convinced that this language added nothing to the Federal taxing power, as on July 17 he introduced a second proposal as follows: "The Congress shall have power to lay and collect direct taxes on incomes without apportionment among the several States according to population."

During this time the tariff bill of 1909 was under consideration by the Congress. Several amendments were offered to this bill to provide an income tax. Senator Daniel, of Virginia, proposed a special excise tax on corporations to be measured by their gross income. Senator Bailey, of Texas, introduced a general income tax which, with the exception of the State and local bond interest issue, fully challenged the *Pollock case*. The Bailey proposal provided for a flat rate and applied to both individuals and corporations. Senator Cummins submitted a bill providing for a graduated income tax upon individuals, but containing provisions exempting salaries of State and local officers and employees and the interest upon State and local securities.

Of particular interest are two bills which were submitted by Mr. Cordell Hull, of Tennessee, in the House. The first provided for a general income tax which would apply to income from property but which exempted State and local bond interest. The second, instructed the Treasury Department and the Department of Justice to proceed upon the collection of taxes under the 1894 act (except as those applied to State and local bond interest), regardless of the decision in the *Pollock case*.

It will be noted that there ran through these proposals a general disregard of the *Pollock case* insofar as it related to income from property. From statements by the Members, and from the debates on the floor, it will appear that among a considerable element in both Houses there existed a strong resentment toward that portion of the Pollock decision, and a belief that, considering the importance of the decision and the majority of only 1 vote, that a reversal might be had

upon another case involving the same point. However, with regard to the portion of the decision relating to State and local bond interest, upon which point the Court was unanimous, there was evidenced a general acquiescence and a desire to make all proposed legislation conform to that part of the decision.

On June 16, President Taft in a message to the Congress, submitted two proposals; The first of which recommended that the Congress submit to the States a constitutional amendment "conferring the power to levy an income tax upon the National Government without apportionment among the States in proportion to population." The second recommended the adoption of a corporation excise tax based upon net income. It was generally conceded that this move on the part of the President and the party leaders was made in an effort to "placate the insurgents" and bring about a compromise reasonably acceptable to all of the conflicting elements in the Congress, and, above all, to remove the hindrances to the passage of the tariff bill.

Senator Brown then offered his second proposal for a constitutional amendment already referred to, i. e., "The Congress shall have power to lay and collect direct taxes on incomes without apportionment among the several States according to population." This proposal had the serious fault, from the point of view of a great number of the Members who so strongly resented the Pollock decision, of seeming to admit, by the use of the word "direct," the full implication of the majority's position with respect to a tax on income from property.

Senator Brown's proposal was referred to the Committee on Finance where 10 days later it emerged in the form finally adopted, namely—

"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States and without regard to any census or enumeration."

Thus the Brown proposal was amended by eliminating the despised word "direct" and by adding the phrase "from whatever source derived."

While the Brown proposal was under the consideration of the Finance Committee, Senator McLaurin made the suggestion on the floor that Senator Brown could have secured the same result by simply striking out the words "and direct taxes" in clause 3, section 2 of the Constitution, which provides.

"Representatives and direct taxes shall be apportioned among the several States, etc.," and the words "or other direct" in clause 4, section 9, which provides:

"No capitation, or other direct tax shall be laid, unless in proportion to the census or enumeration, etc."

This suggestion, however, did not take into account the fact that Senator Brown's proposal removed the apportionment requirement only with respect to income taxes, while the elimination of these two phrases would have nullified this requirement with regard to all other direct taxes with the exception of capitation taxes. There was no desire to go this far.

There seems little doubt but that the genesis of the debated phrase lies completely in the word "direct" as used in the Brown proposal. This conclusion seems particularly likely when viewed in the light of the following facts: First, there was a substantial group of Members of Congress who were greatly incensed over the portion of the Pollock decision relating to taxes on incomes from property. As is demonstrated by the bills they introduced and the speeches on the floor, they were anxious to fully challenge this part of that decision. There was another group who favored an income tax but were willing to conform to the decision and wanted to pass an income-tax act that would be acceptable to the Court until an amendment could be secured that would allow a broadened tax. Then, there were, of course, those who were not agreeable to an income tax and did not desire an amendment.

These facts throw light on the compromise language eventually agreed upon. Second, the stimuli for action on the income tax came from the insurgent group. The conservative element was anxious for the passage of the tariff bill. The income-tax issue was a popular one and the agitation and pressure for definite action was acute. It cannot be doubted that almost all Members were sensible to these demands. Thus, when the second proposal for a constitutional amendment was submitted by Senator Brown, who certainly did not come from the most conservative group, the necessity for a compromise upon some generally acceptable language became apparent.

The membership of the *Finance Committee* at this time was as follows: Senators Aldrich (chairman), Burrows, Penrose, Hale, Cullom, Lodge, McCumber, Smoot, and Flint were on the Republican side; the Democrats were Senators Daniel, Money, Bailey, Taliaferro, and Simmons. From these names a majority could be obtained made up of Senators as conservative as any then in office. It is inconceivable that the Finance Committee so constituted would have taken Senator Brown's proposal and extended it to fields clearly not contemplated in its language.

It seems much more reasonable to assume that the word "direct" was stricken out and the phrase "from whatever source derived" inserted, purely to remove the necessity for distinguishing between "indirect" income taxes which were constitutional, and such taxes as were "direct" and thus barred by the Pollock decision. The changed language was undoubtedly a conciliatory gesture on the part of the Finance Committee toward the insurgent element to whom, in their indignation over the *Pollock case* the word "direct" was an affront. Further evidence of the compromise nature of the committee's change in wording is contained in Senator Aldrich's request, upon reporting the bill to the Senate, that the amendment be disposed of without debate.

Senator Brown, in April 1910, in the Editorial Review, made the following comment with regard to the words "from whatever source derived":

"The sole question, therefore, presented by the amendment, and the sole consideration involved in its ratification or rejection is whether or not the United States, the foremost Nation of the world, shall be clothed with this prerogative of national sovereignty—the power to tax incomes according to their value and without regard to apportionment among the several States according to population."

And further—

"Recently the question has been raised by those who are opposed to the ratification of the amendment that with the amendment ratified the powers of the States will in some way be impaired and their strength and vitality, in some way not specified, destroyed.

"The objection is not sound. The amendment in no way changes the existing relation between the State and the Federal Government. Whether the amendment is ratified or not, the rights of the State as a State and those of the Federal Government in their relation to each other will remain the same. Each sovereignty is now wholly independent of the other in the exercise of certain governmental functions and the proposed amendment neither adds to nor takes away from the independence now enjoyed by each. But it is the argument of some who oppose its adoption that the amendment will alter that relation by conferring upon the Federal Government the power to tax the incomes arising from investments in State and municipal securities. I do not agree with that argument because the language of the amendment and the occasion for its submission by Congress and the Constitution itself do not warrant that interpretation. Under the existing Constitution, the Federal Government is without the power to tax State or municipal securities. And the State is without the power to tax Federal securities. Each may tax its own securities but neither is subject to the jurisdiction of the other in taxation matters. The proposed amendment in not the remotest degree suggests any change in that regard. Each sovereignty is left to the independent and exclusive privilege of taxing its own securities without interference by the other."

While there were a number of references made by Members on the floors of both House and the Senate to the desirability of taxing the interest from State and local bonds, there is nothing in the legislative history of the sixteenth amendment from which it could be concluded that it was the intention of the Congress to frame the amendment so as to provide for the taxability of State and local bond interest. The language "from whatever source derived" seems more properly to have been used to eliminate the use of the word "direct."

Thus the Senator introducing the amendment and Chairman Aldrich, who was in charge of the bill on the floor, gave no intimation that the momentous step of subjecting State and local bond interest to the Federal income tax, was contemplated. In fact, they denied this to be the intention of the Congress and declared that the only purpose of the language was to remove the necessity for apportionment with regard to such income taxes as might be direct.

Mr. Harry Hubbard, in an article published in the Journal of the American Bar Association, quotes from a letter written to him by Senator Knute Nelson, of Minnesota, in 1920. Senator Nelson was a member of the Committee on the Judiciary. He wrote Mr. Hubbard that "the words 'from whatever source derived' were inserted in an amendment in the Senate at my instance and on my insistence." Later he wrote Mr. Hubbard that "the record may not show it but I introduced the amendment and the facts are that at that time Mr. Aldrich was chairman of the Finance Committee and I discussed the matter with him and insisted on the amendment being inserted and he concurred with me and reported the bill with the phrase 'from whatever source derived.'" With regard to the decision in *Evans v. Gore,*[illegible] Senator Nelson said, in this letter:

"I have been very sorry to see that the Supreme Court in its decision has utterly ignored the phrase; in fact, treated the amendment as though this phrase were not a part of it."

The Record discloses that Senator Nelson was present in the Senate at the time the debates on the amendment were taking place. It also discloses that in 1910 when Senator Borah made his often-quoted speech with regard to the interpretation of the amendment, that Senator Nelson was also present. It seems very strange that he should sit through these debates in which the contrary view was so definitely and forcibly stated, without arising to make his own position clear with regard to the disputed phrase.

When the amendment came before the States for ratification, a number of people, including eminent legal authorities, governors, and others in positions of influence, expressed grave doubts as to the proper construction of the disputed phrase. Governor Hughes, of New York, in a message to his General Assembly, pointed out that the phrase could be construed as to include not only incomes from property, but also interest from State and local securities. His message was given wide circulation, and his popularity coupled with a very general respect for his clarity of mind and legal ability, undoubtedly made his views of considerable weight in the minds of State legislators. Senator Borah and the able and learned Elihu Root, took issue with the Governor and, in a clear and very forceful manner, pointed out that there was no substantial ground upon which anyone could conclude that the Congress intended to do any more than to remove the apportionment requirement with respect to income taxes.

Senator Borah pointed out further, that from the beginning the Federal taxing power had been plenary and complete except for the express restraints imposed by the provisions requiring apportionment of direct taxes and the uniformity of all taxes, and the implied restraint, under Court decisions, against diminution of the salaries of judges, the burdening or infringement of State powers, the impairment of contracts, denial of due process, and the like—by use of the taxing power. In other words, that except for the requirement for the apportionment of direct taxes and the uniformity of taxation that the Federal taxing power was just as broad and as all inclusive as any other express power granted to the Congress by the Constitution; but, just as were all of the other powers, the taxing power was subject to the general limitations and restraints provided in the Constitution.

Others joined in the general debate and a number of very forceful opinions were expressed and circulated among the State legislatures. However, no one can say just what effect these statements had in determining the choice of the State legislators.

Whatever was intended, the choice of language was unfortunate. Considering the atmosphere of doubt that surrounded the amendment during the time of its ratification, there is little reason to assume that such an important step as the removing of the ban on a Federal tax of State bonds would have been undertaken or completed in such ambiguous and uncertain terms and in the absence of a general agreement as to just what the language really meant. This seems doubly certain when it is considered that, had the intention been definitely and ascertainably to include State bond interest, the States would have been giving up a valuable immunity without receiving in return any comparable compensation.

This point has been ably summed up by Mr. William Anderson in an article on tax exempt securities in the Minnesota Law Review for March 1924, as follows:

"Can it be assumed that Congress, without discussion of the question, by the clumsy use of four words in the middle of an amendment, intend to introduce a change of so tremendous significance? New and fundamental powers are not usually conferred by a single phrase found in a provision having a different purpose. If the broad construction would be applied to the amendment, it might be even construed broad enough to tax the incomes or revenues of the State or municipal government themselves. Furthermore, this broad construction, if taken literally, would authorize the impairment of the obligations of contracts.

"It is entirely improper to take out a single provision of the Constitution and construe it without reference to other parts of the document. It is equally unjustifiable to take the bare words and construe them with an uncompromising

[illegible] 253 U. S. 245.

liberality. When the letter is the law, the people become victims of the unskilled draftsman and the careless copyist. The official or strict construction of the Constitution is preferable, first, because it considers the Constitution as a whole; second, it is not misled into disregarding the form of the amendment for its substance, and third, it does not open the door to such results as impairment of obligations of contracts, it preserves the fundamental rule that the Federal Government may not tax the governmental instrumentalities of the State."

In this connection, the decision in the case of *Fairbank* v. *United States* is of interest. The validity of a Federal stamp tax on foreign bills of lading was before the Court. In fixing the scope to be allotted to the provision limiting the taxing power, by prohibiting taxes on articles exported, the Court laid down the following general rule with regard to powers and restrictions thereon:

"We are not here confronted with a question of the extent of the powers of Congress but one of the limitations imposed by the Constitution on its action, and it seems to us clear that the same rule and spirit of construction must also be recognized. If powers granted are to be taken as broadly granted and as carrying with them authority to pass those acts which may be reasonably necessary to carry them into full execution; in other words, if the Constitution in its grant of powers is to be so construed that Congress shall be able to carry into full effect the powers granted, it is equally imperative that where prohibition or limitation is placed upon the power of Congress that prohibition or limitation should be enforced in its spirit and to its entirety. It would be a strange rule of construction that language granting powers is to be liberally construed and that language of restriction is to be narrowly and technically construed."

With regard to the power of Congress to tax the interest on State and local securities, the limitation was no less exacting, because it was implied rather than expressed as in the above case.

Looking back over the history of the amendment, the following points stand out:

First, that with regard to the portion of the Pollock decision dealing with incomes from property, the Court's majority was 5 to 4; but, as to the power of the Federal Government to tax State and local bond interest, it was unanimous.

Second, that in order to levy an effective income tax, it was necessary to remove the constitutional requirement for apportionment of direct taxes.

Third, that Senator Brown's second proposal sought to do just that, and that nothing more was contemplated or possibly to be inferred from the language used.

Fourth, that it is extremely unlikely that the conservatively constituted Committee on Finance had in mind extending the scope of the Brown proposal to include tax-exempt interest when it struck out the word "direct" and inserted the phrase "from whatever source derived."

Fifth, that it is clear from the statements of Senators Brown, Borah, and Aldrich that there was no intention on the part of the Congress to include State bond interest by the use of the disputed phrase.

Sixth, that in spite of Senator Nelson's statement (made in a letter in 1920) that the change of words was made at his insistence and that he understood them to include State bond interest, it seems strange that he should sit silent through the debates without making his position clear.

Seventh, that the origin of the phrase undoubtedly arose in the use of the word "direct" by Senator Brown in his proposal, and it was used to avoid the necessity for using this unpopular word.

Eighth, that even if there were doubt as to the proper construction of the phrase and the intention of its framers, an ambiguous amendment should not have been construed so as to infringe the powers of the State unless such a step was unquestionably and incontrovertibly authorized.

(2) *Judicial interpretation*

The second question to be considered is whether the Federal Government has the power to tax the income from State bonds by reason of the sixteenth amendment. This amendment provides that:

"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

---

181 U. S. 283.

It is stated that the purpose of the sixteenth amendment was to overcome the decision of the Supreme Court in the *Pollock case*. However, it should be remembered that it was only the majority opinion of the *Pollock case* which was criticized, not the minority. Both the majority and minority opinions were unanimous in holding that the Congress was without power to apply a nondiscriminatory Federal income tax to the income from State or municipal bonds. Moreover, that case did not involve the taxation of State officers or employees for the reason that their salaries were specifically exempted by Congress in the act before the Court in the *Pollock case*. Mr. Justice Fuller, in referring to the income from State and municipal bonds in the rehearing on the *Pollock case*, said:

"We have unanimously held in this case that, so far as this law operates on the receipts from municipal bonds, it cannot be sustained, because it is a tax on the power of the States, and on their instrumentalities to borrow money, and consequently repugnant to the Constitution."

He then went on to state:

"But if, as contended, the interest when received has become merely money in the recipient's pocket and taxable as such without reference to the source from which it came, the question is immaterial whether it could have been originally taxed at all or not. This was admitted by the Attorney General with characteristic candor; and it follows that, if the revenue derived from municipal bonds cannot be taxed because the source cannot be, the same rule applies to revenue from any other source not subject to the tax; and the lack of power to levy any but an apportion tax on real and personal property equally exists as to the revenue therefrom."

In construing this opinion, the study of the Department of Justice holds that:

"The majority view was that the Court either looks to source for all purposes or must accept the income concept for all purposes" (Department of Justice Study, p. 118).

and then continues:

"The sixteenth amendment was written into the Constitution because of the effect of this decision upon the power of the Congress. It is believed that the amendment, in giving to the Congress the power to tax incomes "from whatever source derived" without apportionment, abolishes the governing principle in the *Pollock case*, i. e., that a tax on income is equivalent to a tax on the several sources from whence such income is derived. This makes an income tax a tax on income without regard to the sources from whence derived. As the Chief Justice pointed out in the opinion on rehearing, if an income tax is not considered as the legal equivalent of a tax on the source, then the interest on State and municipal obligations would be subject to a general, nondiscriminatory income tax."

The Chief Justice in this case was showing the result which would follow if the source of the income was disregarded for all purposes. Under such a theory, the Congress would be unable to classify income, that is, it would be unable to tax capital gains at one rate and earned income at another rate or to determine a distribution was capital or an ordinary dividend in the hands of the shareholder. It would also be unable to levy an income tax on wages, which tax has recently been upheld by the Supreme Court in connection with the Social Security Act. If the only income tax authorized by the sixteenth amendment is "a tax on income without regard to the source from whence derived," all of our income-tax laws, beginning with the Revenue Act of 1913, would be unconstitutional. That this was not the view of the Supreme Court as to the purpose of the sixteenth amendment is made evident by the first decision arising under the sixteenth amendment, construing the Revenue Act of 1913. This was the case of *Brushaber* v. *Union Pacific Railroad Co.*, decided January 24, 1916.

In the Revenue Act of 1913 Congress classified incomes and allowed certain exemptions. Proceeds from life-insurance policies or from life-insurance endowments or annuity contracts were not included in income. The interest upon the bonds of State or political subdivisions, the compensation of the President of the United States, the judges of the Supreme and inferior courts, and the compensation of officers or employees of a State or political subdivision were exempt.

---

157 U. S. 429; 158 U. S. 601.
240 U. S. 1.

individuals were entitled to deduct from their gross income dividends received from corporations. To determine whether or not the amounts in the hands of the individual were exempt or deductible under the law, it was necessary to look into the source from which such income was derived.

The first point raised in the *Brushaber case* was that the effect of the sixteenth amendment was merely to waive the requirement of apportionment among the States in its application to a general and uniform tax upon incomes from whatever source derived and that the income-tax law of 1913, except insofar as the tax thereby imposed was in reality such a general and uniform tax on incomes, it derived no support from the sixteenth amendment. It was contended in that case that—

"Discriminations, inequalities, exemptions, and artificial rules of computation are excluded from any income-tax law which purports to derive its authority from the sixteenth amendment, because they necessarily involve the taxing of something other than income."

It was also contended that, under the sixteenth amendment, a tax could not be imposed on particular kinds of income, such as the tax on income from gold mines or upon rates received from leasehold estates. It was further contended that the tax to be imposed under the sixteenth amendment must be a general tax upon incomes from whatever source derived, merely because they were incomes and not because of their size or their source or any other quality or incident whatsoever.

The Court summed up the contentions as to the invalidity of the act on these points as follows:

"(a) The amendment authorizes only a particular character of direct tax without apportionment, and therefore if a tax is levied under its assumed authority which does not partake of the characteristics exacted by the amendment, it is outside of the amendment and is void as a direct tax in the general constitutional sense because not apportioned.

"(b) As the amendment authorizes a tax only upon incomes 'from whatever source derived,' the exclusion from taxation of some income of designated persons and classes is not authorized and hence the constitutionality of the law must be tested by the general provisions of the Constitution as to taxation, and thus again the tax is void for want of apportionment."

It is clear, therefore, that the Supreme Court had before it in the *Brushaber case* the question as to whether or not the income tax authorized by the sixteenth amendment was "a tax on income without regard to the source from whence derived."

The Court, before taking up the text of the amendment, made a brief statement of the legislative and judicial history of the subject with which the amendment was concerned. The following is quoted from the opinion of the Court as to these matters:

"* * * That the authority conferred upon Congress by section 8 of article I 'to lay and collect taxes, duties, imposts, and excises' is exhaustive and embraces every conceivable power of taxation has never been questioned, or, if it has, has been so often authoritatively declared as to render it necessary only to state the doctrine. And it has also never been questioned from the foundation, without stopping presently to determine under which of the separate headings the power was properly to be classed, that there was authority given, as the part was included in the whole, to lay and collect income taxes. Again, it has never moreover been questioned that the conceded complete and all-embracing taxing power was subject, so far as they were respectively applicable, to limitations resulting from the requirements of article I, section 8, clause 1, that 'all duties, imposts, and excises shall be uniform throughout the United States,' and to the limitations of article I, section 2, clause 3, that 'direct taxes shall be apportioned among the several States,' and of article I, section 9, clause 4, that 'no capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.' In fact, the two great subdivisions embracing the complete and perfect delegation of the power to tax and the two correlated limitations as to such power were thus aptly stated by Mr. Chief Justice Fuller in *Pollock v. Farmers' Loan & Trust Company, supra*, at page 557: 'In the matter of taxation, the Constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely: The rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts, and excises.' It is to be observed, however, as long ago pointed out in *Veazie Bank v. Fenno* (8 Wall. 533, 541), that the

requirement of apportionment as to one of the great classes and of uniformity as to the other class were not so much a limitation upon the complete and all-embracing authority to tax, but in their essence were simply regulations concerning the mode in which the plenary power was to be exerted. In the whole history of the Government down to the time of the adoption of the sixteenth amendment, leaving aside some conjectures expressed of the possibility of a tax lying intermediate between the two great classes and embraced by neither, no question has been anywhere made as to the correctness of these propositions. At the very beginning, however, there arose differences of opinion concerning the criteria to be applied in determining in which of the two great subdivisions a tax would fall * * *.

"* * * Upon the lapsing of a considerable period after the repeal of the income-tax laws referred to, in 1894 an act was passed laying a tax on incomes from all classes of property and other sources of revenue which was not apportioned, and which therefore was of course assumed to come within the classification of excises, duties, and imposts which were subject to the rule of uniformity but not to the rule of apportionment. The constitutional validity of this law was challenged on the ground that it did not fall within the class of excises, duties, and imposts, but was direct in the constitutional sense and was therefore void for want of apportionment, and that question came to this court and was passed upon in *Pollock v. Farmers' Loan & Trust Co.* (157 U. S. 429; 158 U. S. 601). The Court, fully recognizing in the passage which we have previously quoted the all-embracing character of the two great classifications, including, on the one hand, direct taxes subject to apportionment, and on the other, excises, duties, and imposts subject to uniformity, held the law to be unconstitutional in substance for these reasons: Concluding that the classification of direct was adopted for the purpose of rendering it impossible to burden by taxation accumulations of property, real or personal, except subject to the regulation of apportionment, it was held that the duty existed to fix what was a direct tax in the constitutional sense so as to accomplish this purpose contemplated by the Constitution (157 U. S. 581). Coming to consider the validity of the tax from this point of view, while not questioning at all that in common understanding it was direct merely on income and only indirect on property, it was held that considering the substance of things it was direct on property in a constitutional sense, since to burden an income by a tax was from the point of substance to burden the property from which the income was derived and thus accomplish the very thing which the provision as to apportionment of direct taxes was adopted to prevent. As this conclusion but enforced a regulation as to the mode of exercising power under particular circumstances, it did not in any way dispute the all-embracing authority possessed by Congress, including necessarily therein the power to impose income taxes if only they conformed to the constitutional regulations which were applicable to them. * * *"

Then the Court, after quoting the amendment, went on to state: "* * * It is clear on the face of this text that it does not purport to confer power to levy income taxes in a generic sense—an authority already possessed and never questioned—or to limit and distinguish between one kind of income taxes and another, but that the whole purpose of the amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source whence the income was derived. Indeed, in the light of the history which we have given and of the decision in the *Pollock case*, and the ground upon which the ruling in that case was based, there is no escape from the conclusion that the amendment was drawn for the purpose of doing away for the future with the principle upon which the *Pollock case* was decided; that is, of determining whether a tax on income was direct not by a consideration of the burden placed on the taxed income upon which it directly operated, but by taking into view the burden which resulted on the property from which the income was derived, since in express terms the amendment provides that income taxes, from whatever source the income may be derived, shall not be subject to the regulation of apportionment. From this in substance it indisputably arises, first, that all the contentions which we have previously noticed concerning the assumed limitations to be implied from the language of the amendment as to the nature and character of the income taxes which it authorizes find no support in the text and are in irreconcilable conflict with the very purpose which the amendment was adopted to accomplish. * * *"

And then the Court concluded:

"* * * the amendment contains nothing repudiating or challenging the ruling in the *Pollock case* that the word "direct" had a broader significance since it embraced also taxes levied directly on personal property because of its ownership, and therefore the amendment at least impliedly makes such wider significance a part of the Constitution—a condition which clearly demonstrates that the purpose was not to change the existing interpretation except to the extent necessary to accomplish the result intended; that is, the prevention of the resort to the sources from which a taxed income was derived in order to cause a direct tax on the income to be a direct tax on the source itself and thereby to take an income tax out of the class of excises, duties, and imposts and place it in the class of direct taxes."

The same contentions were raised in the case of *Stanton v. Baltic Mining Company*.[42] In that case, the appellant in its brief pointed out that income derived from the exercise of essential governmental functions of States or their political subdivisions were among the exemptions granted by the 1913 act. This case also raised the point that the tax on mining companies was a tax on the gross production and not on the net production of the working of the mine by the corporation and that, for that reason, the tax was not within the purview of the sixteenth amendment. In answering this question, the Court said:

"But, aside from the obvious error of the proposition intrinsically considered, it manifestly disregards the fact that by the previous ruling it was settled that the provisions of the sixteenth amendment *conferred no new power of taxation* but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged and being placed in the category of direct taxation subject to apportionment by a consideration of the sources from which the income was derived; that is, by testing the tax not by what it was—a tax on income—but by a mistaken theory deduced from the origin or source of the income taxed. Mark, of course, in saying this we are not here considering a tax not within the provisions of the sixteenth amendment; that is, one in which the regulation of apportionment or the rule of uniformity is wholly negligible *because the tax is one entirely beyond the scope of the taxing power of Congress and where consequently no authority to impose a burden direct or indirect exists*. In other words, we are here dealing solely with the restriction imposed by the sixteenth amendment on the right to resort to the source whence an income is derived in a case where there is power to tax for the purpose of taking the income tax out of the class of indirect, to which it generically belongs, and putting it in the class of direct, to which it would not otherwise belong, in order to subject it to the regulation of apportionment."

It will be noted that this case held that the right to disregard the source existed in a case where there was a power to tax only for the purpose of not applying the rule of apportionment. Of course, in the case of income from State or municipal bonds, there was no power to tax.

The next case involving the sixteenth amendment in connection with the Revenue Act of 1913 was that of the *Tyee Realty Co. v. Anderson*.[43] Since all of the contentions in this case had already been decided by the *Brushaber case*, the Court held that case to dispose of the issues here involved.

The conclusion from the cases construing the Revenue Act of 1913 seems inescapable that the Court did not accept the interpretation that an income tax, to meet the requirements of the sixteenth amendment, must be a tax on incomes without regard to the source from whence derived. It concluded that the source was to be disregarded by that amendment only where there was a power to tax, and then only for the purpose of preventing the application of the rule of apportionment. The provisions of the Revenue Act of 1913 exempting the interest upon obligations of State or political subdivisions were inserted according to Mr. Cordell Hull, who was in charge of the bill in the House, to prevent the injection of any more constitutional questions or controversies on the bill. On the Senate side, it was stated that these exemptions were inserted to foreclose the doubt which was regarded as improbable that such revenues might subject to Federal taxation. Of course, at that time, the decisions in the *Brushaber case* and related cases had not been rendered. These exemptions were continued through the Revenue Acts of 1916 and 1917. The Revenue bill of 1918, as introduced in the House, attempted to tax the interest

[42] 240 U. S. 103.
[43] 240 U. S. 115.

on State and municipal obligations, but this provision failed of passage. This bill included in gross income—

"the interest from obligations of States, Territories, political subdivisions thereof, or the District of Columbia, issued after the passage of this act, unless authorized by law prior to the passage of this act or unless issued for the purpose of funding or refunding interest-bearing indebtedness outstanding at the time of the passage of this act or for the performance of a contract entered into prior to the passage of the act."

The reason for taxing this interest, which had been free of tax under the prior acts, was according to the committee report, that—

"the committee was of the opinion that, although there is doubt as to the constitutionality of including the interest on these obligations, justice requires that at least in time of war the holders of these securities should share the burdens equally with the holders of Liberty bonds."

In regard to the provision subjecting the interest on new issues of State and municipal bonds to taxation, the Senate Finance Committee struck out the House provision specifically taxing them, the report stating that—

"Apart from the constitutional question, it seems unwise for Congress to attempt to impose this tax upon obligations of States and municipalities so long as these States are not free to tax in a similar manner the obligations of the United States."

The conference committee agreed to the Senate amendment and restored the exemption. However, there was a provision inserted in the Revenue Act of 1918 which specifically taxed the salaries of the President and judges of the United States Supreme Court and the inferior courts of the United States. This was the situation existing until 1920, when the case of *Evans v. Gore*[44] was decided. This case involved the taxation of the salary of a Federal judge for the western district of Kentucky, who was appointed by the President with the advice and consent of the Senate in 1899. The Government taxed his salary under the Revenue Act of 1918, which specifically included as income the salary of such a judge. There were two questions presented to the Supreme Court for decision: (1) Whether in subjecting the salary of a Federal judge to a net income tax amounted to a diminution of his compensation under article III, section 1, of the Constitution; and (2) if the levying of a net income tax does amount to a diminution of a judge's salary, does the sixteenth amendment modify this express provision of the Constitution so as to render such salary subject to the income tax? The Court concluded that the levying of an income tax would diminish the compensation of a Federal judge within the meaning of the Constitution, and then went on to state:

"Does the sixteenth amendment authorize and support this tax and the attendant diminution; that is to say, does it bring within the taxing powers subjects theretofore excepted? The Court below answered in the negative; and counsel for the Government say:

" 'It is not, in view of recent decisions, contended that this amendment rendered taxable as income anything that was not so taxable before.'

"We might rest the matter here, but it seems better that our view and the reasons therefor be stated in this opinion, even if there be some repetition of what recently has been said in other cases."

After reviewing the *Pollock case*, the *Brushaber case*, and other cases, and the legislative history of the sixteenth amendment, the Court concluded that the sixteenth amendment did not extend the taxing power to new or excepted subjects but merely removed all occasion otherwise existing for an apportionment among the States of taxes laid on income derived from one source or another. In other words, this question was reconsidered, and the view in the *Baltic Mining Company case* and other cases was adhered to, which, in effect, meant that the sixteenth amendment would not authorize such a tax.

In *Peck & Company v. Lowe*,[45] relating to the application of the income tax imposed by the Revenue Act of 1918 to exports, the argument was made that the sixteenth amendment had not enlarged the taxing power of Congress so that it could levy a net income tax on exports. Mr. Justice Van Devanter, in delivering the opinion of the Court, held that the sixteenth amendment had no real bearing on the case, but stated—

"that this amendment does not extend the taxing power to new and excepted subjects, but merely removes all occasion, which otherwise might exist, for an

[44] 253 U. S. 245.
[45] 247 U. S. 165 (1918).

apportionment among the States of taxes laid on income, whether it be derived from one source or another."

In the case of *Eisner v. McComber,* the Court in determining whether or not a stock dividend was income within the meaning of the sixteenth amendment, said:

"The sixteenth amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributable to them before the amendment was adopted."

And then restated the conclusions referred to in the former opinions that the amendment did not extent the taxing power to new subjects but merely removed the necessity which otherwise might exist for an apportionment among the States of taxes laid on income. Also, in *Metcalf & Eddy v. Mitchell,* Mr. Justice Stone in writing the majority opinion referred to the cases holding that the sixteenth amendment did not extend the taxing power to any new classes of subjects.

The only case directly involving the taxation of the income from State and local bonds after the passage of the sixteenth amendment was that of the *National Life Insurance Co. case,* already discussed in the first part of the report. In that case the Court did not consider the sixteenth amendment directly but held that Congress was without power to impose such a tax.

It is reasonably clear, therefore, that the Court, both by dicta and decisions, has come to the conclusion that items of income which were not taxable before the adoption of the sixteenth amendment are not taxable after such adoption.

The CHAIRMAN. I have here a short supplementary statement made by Mr. Williamson, who appeared here yesterday, on the tobacco situation. It is just one short page. That will be inserted here in connection with his statement.

(The document referred to appears on p. 2778 of these hearings.)

The CHAIRMAN. The next witness on the calendar is Mr. Ray Murphy, assistant general manager, Association of Casualty and Surety Executives, 60 John Street, New York. Is Mr. Murphy here?

Mr. MURPHY. Yes, Mr. Chairman.

The CHAIRMAN. Come forward and identify yourself.

STATEMENT OF RAY MURPHY, ASSISTANT GENERAL MANAGER, ASSOCIATION OF CASUALTY AND SURETY EXECUTIVES, NEW YORK, N. Y.

Mr. MURPHY. I am Ray Murphy, assistant general manager of the Association of Casualty and Surety Executives, on behalf of which I appear. This association is composed of 61 principal stock casualty insurance and surety companies doing business in the United States. The principles expressed herein apply to all mutual insurance companies other than life.

On March 3, 1942, Mr. Randolph Paul, special tax adviser to the Secretary of the Treasury, in his appearance before this committee made the following statement:

Mutual insurance companies other than life.—Many of the mutual casualty insurance companies, large as well as small, are given an outright exemption from taxation under section 101 (11), although that section was originally designed to exempt only small and local mutual companies. Other mutual companies, while nominally subject to tax, ordinarily pay no tax under the present method of computing their income. This has resulted in a serious disparity in tax treatment between such mutual companies and the stock casualty companies.

It is suggested that the exemption in section 101 (11) be confined to those mutual casualty companies whose net taxable income does not exceed $25,000 and which do not write insurance on any property having a value of more than $50,000, regardless of whether reinsured. It is further suggested that the remaining mutual companies be taxed on the sum of their investment income and the additions to their surplus which are free from claims of policyholders.

---

252 U. S. 189 (1920).
269 U. S. 514 (1926).
277 U. S. 508.

Such statement was made by Mr. Paul as a part of the Treasury's recommendations for removal of special privileges. We concur in Mr. Paul's statement that there is serious disparity in tax treatment between stock and mutual insurance companies other than life. Such disparity can be explained in these simple terms:

Mutuals are permitted exactly the same deductions as stock companies. In addition they enjoy the following deductions which are not permitted to stock companies:

They are permitted to deduct dividends paid to policyholders.

They are permitted to deduct amounts of premiums which are retained and added to surplus. Therefore, the mutuals have never paid any tax either on their investment profits or their underwriting profits. This despite the declared intent of the Congress to impose a tax upon both stock and mutual companies.

Applying to actual figures these special deductions allowed to mutuals we find a mutual company with $46,000,000 of net premium writings in 1940, showing $11,000,000 underwriting and investment profits, paying nothing into the Federal Treasury for income taxes. From 1940 business, this same company added $2,300,000 to its surplus. By this same process 23 leading mutuals earned $42,000,000 in 1939 and paid nothing or nearly nothing as Federal income taxes.

During the continuation of these special privileges the mutuals have accumulated over the years not less than $150,000,000 in surpluses which belong to the companies free from claims of policyholders.

We wish now to clarify one extremely important point, concerning which the large commercial mutuals for many years have successfully confused the issues and the facts. That point is the claim repeatedly made by mutuals' spokesmen that there is no distinction between a small farmers' mutual and the largest commercial mutual in the United States, and that both therefore should be exempt from taxation. We will summarize briefly the character of income and the methods of operation of these wholly different types of mutual companies, believing this will dispose of the claim upon which the large commercial mutuals have consistently based their plea for tax exemption.

Classified according to character of income and methods of operation, the two principal types of mutual casualty companies are:

In the first group, those operating on the assessment or premium-deposit basis and, in the second group, those which collect a fixed cash premium equivalent to that charged by other companies generally.

Usually the income of companies in the first group consists almost entirely of assessment or premium deposits collected from members either in advance or after occurrence of the loss. No dividends are paid to members; amounts refunded to members, if any, represent a return of the unused portion of the assessment or premium deposit. These mutuals do not, with a few notable exceptions, maintain extensive organizations nor employ commercial methods of conducting their operations, such as widespread advertising and other forms of soliciting business from the general public. It is doubtful whether the entire number of mutuals operating on this basis have any profits of consequence. In this group fall the several hundred true farmers' mutuals which the Congress has heretofore exempted as a matter of tax policy. Under the recommendations of the Treasury made to this committee on March 3, 1942, by Mr. Paul, every small farmers' mutual would continue to be exempt.

In contrast are the commercial mutuals in the second group, many of which operate on a national and, in some cases, international scale. Their policies provide the same coverage as those issued by the stock companies. A flat, final, fixed premium is charged as distinguished from collection of an assessment or a premium deposit. Mutuals have sought and secured authority in every State to issue nonassessable policies; the issuance of such policies is now their common practice. This constitutes an abandonment of the fundamental concept of mutuality.

The wholly commercial nature of these companies is emphasized by the methods and vigor with which they seek their business.

Like many other large commercial enterprises, they spend hundreds of thousands of dollars annually in advertising. Their national advertising is directed not to individuals alone but to industry and commerce as well. Their advertisements are carried in the largest periodicals and newspapers in the country, such as Fortune, Time, Newsweek, Saturday Evening Post, Nation's Business, Colliers, New York Times, and Wall Street Journal.

The policyholders of commercial mutuals now include many of the largest industries in the United States. One mutual advertises that it is the leading writer of compensation insurance in America. Another advertises that it is the largest exclusive writer of automobile insurance in the world.

The commercial mutuals employ conventional methods of solicitation—some through agents, others through branch-office employees, and still others through both agents and branch offices. The larger companies have offices in the principal cities throughout this country; some maintain offices in foreign countries.

Many of these companies maintain large home office buildings staffed by hundreds of employees.

In 1940, the 203 mutual casualty companies doing business in the United States had premium and investment income of more than a quarter of a billion dollars; 43 of these companies, each with an annual premium income of more than a half million dollars, wrote 92 percent of the total business. Those 43 companies, therefore, wrote more than 10 times the volume of business written by the other 160 companies; 6 of these 43 wrote 59 percent of the total mutual casualty business; each of these 6 companies in 1940 had premium income ranging from $11,000,000 up to $46,000,000. These 6 biggest companies, as I am told, are members of the American Mutual Alliance for which a spokesman appeared before your committee last Thursday.

It should be transparently clear that the true farmers and local mutuals are not the real parties in interest represented by the spokesman appearing last Thursday before this committee. The true farmers and local mutuals have either no profits, or profits of no importance from a tax standpoint. Furthermore, under the Treasury's proposal, those mutuals having net income not in excess of $25,000 and not insuring risks in excess of $50,000 would be exempt. The real parties in interest represented by the mutual spokesmen are the small number

of large mutuals whose methods of business we have herein described, wholly commercial in nature, parallel in operation in all respects with the operations of the stock companies.

A principal contention made by the mutual spokesmen is that their accumulations of surplus are held in trust for their policyholders. This cannot be demonstrated. At this time the largest mutual casualty company is resisting in court the claim of a former policyholder to a pro rata share of the company's surplus which was accumulated during the long period that it was a policyholder. Very probably all other commercial mutuals would resist similar claims by policyholders.

With no constancy of policyholders, with policyholders coming and going and ever changing with intermingling of funds, with no records of proportionate accumulations from the premiums of individual policyholders, with a fixed practice of resistance to policyholders' claims thereon, the commercial mutuals cannot in good faith contend that their accumulations of surplus are in fact held in trust. They are in fact the property of the company, free from any claim of the policyholder for participation therein. The hoary myth of trusteeship has long been a favorite device of the commercial mutuals in their successful resistance to Federal income taxation.

Now a few words concerning the Federal tax history of stock casualty and surety companies. Since 1909, the date of the original Corporate Excise Tax Act, which taxed corporations on their net income, they have remained subject to tax on their net income at approximately the same rate applied to corporations generally. The rates on stock casualty and surety companies are now identical with those of other corporations. Under successive revenue acts since 1909 the stock companies have paid millions of dollars of Federal taxes based on net income. Under the rate increases proposed for 1942 their Federal taxes will be drastically increased.

What is the tax history of the mutual casualty companies? According to the testimony of their own spokesmen here last week, they have paid nothing, or nearly nothing, into the Federal Treasury by way of income taxes. They will continue to pay nothing, regardless of rate increases, so long as the present situation maintains.

Neither the time allotted, nor your patience, will permit a detailed verbal reply to the various points raised by the five mutual spokesmen in support of their plea for tax exemption. I shall, therefore, cover as quickly as I possibly can the principal points advanced by them, and I ask leave to file with the committee additional data, statistics, and other information touching upon these points, as well as other pertinent matter.

The CHAIRMAN. Without objection, they may be filed.

(The statement referred to is on file with the clerk of the committee.)

Mr. MURPHY. Four points were listed at the committee hearing of April 9, by the spokesman for the American Mutual Alliance, in opposition to the Treasury recommendations presented by Mr. Paul. We shall summarize here the answers to these points, requesting that the committee, if it desires, consult such additional exhibits, as we are permitted to file, for more complete information.

The first point alleged was that no disparity exists in tax treatment between stock and mutual casualty companies, and that the present difference in tax treatment between the stock companies and the mutual companies, two wholly different types of companies, is fair and reasonable.

In one breath the spokesman stated that no disparity existed and in the next breath stated, in effect, that the disparity which does exist is justified.

When one set of corporations, the stock companies, pays several million dollars a year in Federal taxes and another set conducting exactly the same kind of business, the mutual companies, pays nothing, disparity cannot be doubted.

As to the pretended justification for this disparity, we believe that our previous statements herein made, showing the methods and practice of the commercial mutuals, constitute a wholly sufficient answer. Such statements are supported by the matter filed.

The second point alleged by a mutual spokesman was that the stock companies are not in a serious competitive difficulty because of the tax law, as the record of their earnings will show.

We are confident that this committee has no interest in any competitive issue, as such, between the stock and mutual companies. We are equally confident that this committee will not knowingly continue any serious tax disparity, nor permit the Federal tax laws to be employed as a competitive weapon. We believe the existing disparity was never intended. Now that it has become serious by reason of increased tax rates, and can become more serious as such rates increase, we trust that the Congress will implement by appropriate legislation the proposals for elimination of such disparity.

Our view finds support in the statement of the Treasury made to this committee by Mr. Paul on March 3, 1942, pertaining to tax-exempt corporations which engage in trade or business not related to their exempt activities. On this subject he commented:

> In this way sources of considerable tax revenue are withdrawn from the scope of the tax. At the same time privately owned businesses are forced to compete with other businesses not subject to an income tax.

We submit that the exemption of the commercial mutuals from Federal taxation withdraws a considerable revenue from the scope of the Federal income tax. At the same time the stock companies are forced to compete with companies conducting the same type of business but not subject to income taxes.

In attempting to minimize the importance of Federal income taxes as a competitive factor, a mutual spokesman quoted to the committee a newspaper statement purporting to deal with the differential in expense ratios of stock and mutual companies. The illustration is irrelevant and grossly misleading.

First, Federal taxes are not a permissible factor in arriving at expense ratios. Second, the spokesman artfully selected for his example a line of insurance, workmen's compensation, on which few companies are fortunate enough to make a profit. Obviously, any ratio of taxes paid on extremely low-profit business, in relation to expense ratios, or any other element of the premium dollar, will not accurately reflect the general and the true over-all situation. Incidentally, there is no compulsory or uniform accounting method prescribed as respects the treatment of Federal income taxes in various published statistical exhibits. This is immaterial since there is no allowance in insurance rates established by rate-making authorities, for such taxes. Hence, any published average may be wholly meaningless, indicative of nothing.

The important fact is that if the recommendations of the Treasury Department are enacted into law the stock companies will, for 1942 and doubtless future years be subject to income and surtaxes totaling 55 percent and to excess profits taxes as high as 75 percent, and that unless existing law and practice are changed with respect to mutuals, the mutuals will continue free from any Federal taxes based on net income.

It is estimated that if the proposed rate increases are enacted into law the stock companies will be required to pay in Federal income and excess profits taxes of at least 60 cents out of each dollar of taxable net income. By reason of their heavy investment in Federal obligations, the incidence of the corporate surtax is far heavier on the stock companies than on ordinary business corporations.

The third point alleged by a mutual spokesman was that the capital stock insurance companies have enjoyed and are now enjoying special tax privileges not available to other profit-making concerns; and that consequently their profits are greater and taxes less.

This statement is false in its implications. We have hereinbefore outlined the past and present tax status of stock casualty companies, under the successive revenue acts since 1909. The records of the Treasury Department are the best source from which to determine whether the stock companies have enjoyed or are now enjoying special tax privileges.

Inasmuch as such records are not available to us, we respectfully invite the attention of the committee to them, that they may satisfy themselves on this point. We are completely convinced that such records will effectively refute the mutuals' point, and that they and other Government records will establish definitely that stock companies are not only given no favored treatment, but, as, heretofore herein stated, it is the commercial mutuals that are given favored treatment.

Important facts are that the stock casualty and surety companies are required to compute their net income on a basis comparable to that of other corporations generally; the rates of normal tax and surtax are the same as imposed on corporations generally; they are subject to the same provisions of the excess profits tax as are other corporations generally.

The fourth point alleged by a mutual spokesman is that the Government does not lose revenue because of the nonprofit nature of the mutual companies.

The point is fallacious. On the one hand their spokesman extolled the mutuals as the benefactors of the farmers. On the other hand the mutuals' spokesman frankly claimed, for the purposes of one of their points, that from 75 to 100 percent of the mutuals' dividends are paid to policyholders engaged in corporate business.

It must be assumed that the dividend recipients to which the mutual spokesmen referred are not only corporations, but are sizable corporations, since the 24 percent rate was used by such spokesman, and such rate applied, I believe, only to those corporations having taxable net income in excess of $38,000. We believe the mutual spokesmen in this regard are guilty of a violent assumption indeed, but if not, and their statement is true, then their claim of service to the farmer and the little man is quite exploded.

Moreover, the Report of the Commissioner of Internal Revenue for the fiscal year ended June 30, 1941, page 18, reveals that in 1940 540,935 corporations filed Federal income-tax returns, of which 340,220, or 64 percent of all corporations, paid no tax. In 1941 535,525 corporations filed returns, of which 328,342, or about 65 percent, paid no tax.

It is fair to assume that an unknown, but possibly substantial, number of corporate policyholders to whom the commercial mutual companies returned dividends were included in the great majority of non-tax-paying corporations. If so, the mutual spokesman's estimate of Federal income taxes paid by recipients upon dividends from the commercial mutuals becomes even more fantastic.

In laboring their point the mutual spokesmen have chosen to disregard the fact that Federal income taxes, undoubtedly substantial in the aggregate, are paid by the many thousands of stock company commissioned producers.

We believe it to be the desire of the Treasury Department and of the Congress that loopholes be closed so that all unwarranted tax exemptions shall be eliminated. We trust that whatever legislation is enacted, it will effectively close the loopholes concerning which I am making this statement.

However, great anxiety was expressed by the spokesmen for the mutuals over the possibility that the Treasury's recommendations would result in a tax upon mutuals substantially higher than the tax paid by stock companies—"two and one-half to four times more than a similar profit-making stock company"—to quote the spokesman verbatim. Please note the spokesman's perhaps inadvertent use of the word "similar," for at the outset of his statement to this committee he alleged that the stock and mutual companies are "two wholly different types of companies."

We are sure that no one will take seriously this pretense of anxiety. In the light of past and present tax history, the spokesman's tears are reminiscent of the crocodile.

We do not feel that we are presumptuous in saying we are certain that the Treasury will not advocate, nor the Congress permit, the mutuals to be taxed at a greater rate than the rate applied to stock companies. Certainly we have not asked it. We ask equality only.

We are frankly astounded at the attitude of the mutual spokesmen appearing before this committee. One has attempted to prove that the taxes paid by the stock companies are not a competitive handicap. If this were true, it would necessarily follow that similar taxes upon the commercial mutuals would not be a competitive handicap.

One mutual spokesman, out of step for the moment, told you that the statement submitted by the Treasury does not "appear to be urged as a means of raising any substantial revenue." Why, then, are the mutual spokesmen opposing the Treasury's proposal so vigorously?

In refreshing and encouraging contrast, may I say in conclusion, is the attitude of a witness who appeared before this committee last Thursday on behalf of Acacia Mutual Life Insurance Co. He said:

> Our company appreciates the nature of the situation confronting our Government and fully recognizes the necessity for greatly increased revenues. We appreciate the fact that life-insurance companies, along with all other corporations and citizens, must pay additional taxes. We have no fixed ideas as to what tax formula should be adopted by Congress this year to apply to the life-insurance industry.

In response to questions from a member of this committee this witness frankly stated:

> I believe all life-insurance companies expect to pay more income tax. The question, as I stated, is to determine what the fair amount would be and to determine a basis for equitably distributing the tax among the different life-insurance companies.

Parenthetically it may be stated that the tax basis for stock life insurance companies and mutual life insurance companies under present law is identical. No reason exists why the same parity should not exist between stock and mutual companies other than life. No reason exists why life insurance companies, stock and mutual, should be taxed while the commercial mutuals go tax free.

We, too, expect to pay additional taxes. The Nation has never needed them so much as now. And all we ask are only parity and equality and justice.

The CHAIRMAN. Mr. Murphy, if I understand your position, it is that under existing law there is an unfair competitive condition between the mutual companies and what might be called the standard or profit-earning companies, and also that there is under the present law a loophole through which certain insurance companies are escaping or avoiding making their proper contribution to the support of the Government. Do I get your point?

Mr. MURPHY. That is correct, sir.

The CHAIRMAN. Are there any other points that you brought out definitely?

Mr. MURPHY. Those are the only points.

The CHAIRMAN. Those are the two principal points that I understood you to emphasize.

Mr. MURPHY. The exhibits that I filed will amplify, of course, what I have attempted to state.

Mr. DINGELL. You do make a clear distinction between the small noncommercial mutual company and the big profit-making mutual or commercial company, do you not?

Mr. MURPHY. Yes, sir. I do make a distinction.

Mr. DINGELL. You make that in your discussion before the committee?

Mr. MURPHY. Yes.

Mr. DINGELL. And you think that they should be treated differently than they have been heretofore?

Mr. MURPHY. Yes.

Mr. DINGELL. Are you concerned about applying this recommendation of the Treasury to any company that is operated within a given State?

Mr. MURPHY. I do not think that there are any of the types of companies that I have referred to as the so-called commercial mutuals which are operating within one State with, I think, one exception.

I do not know that you can determine the distinction by geographical lines, although I think that that is one very important consideration. In other words, the small local mutuals, which Congress has always desired to exempt, are certainly not the large national and international mutuals which do a business exactly comparable to the stock company business.

Mr. DINGELL. I have a certain company in mind that I am quite confident is really a mutual company in the strictest sense. It has grown up in our midst and has carried out everything that you would expect of a mutual concern. By its own charter and power it is confined absolutely to people within the State of Michigan, and would not seek anybody across the river, as some of the companies that we have referred to will do. They may even go into Canada or Mexico. But this company confines its activities, the insurability of risks, entirely to the State of Michigan.

It has grown to be quite a considerable concern. But it is not your object to class those companies in the category of those that you would care to try to tax as commercial mutual insurance companies. Am I right about that?

Mr. MURPHY. In a sense that is correct, I think, or a correct statement of my point of view.

Of course, the innumerable ramifications and different classifications of mutual companies which have grown up have made it difficult to draw an exact line of demarcation. The commercial mutuals have adopted all of the money-making saving devices for a time of the small mutual companies, but they have also adopted all the other devices adopted by what might be called the free-enterprise companies.

Mr. DINGELL. Of course, to be perfectly candid about it, I think that with most of these mutual companies in a large sense the mutuality can be treated as just a lot of bunk. I refer particularly to some of the life-insurance companies.

Out of the million or more policyholders, when it comes time for the stockholders, so-called, the policyholders referred to as stockholders to meet—out of the million stockholders there will be, if there is a real fight on, probably about a thousand or fourteen hundred at the very most of those living in New York, and New Jersey, and Delaware. Is that about right?

Mr. MURPHY. I do not want to get the life-insurance companies on my neck. I have plenty of trouble now.

Mr. DINGELL. I will not expect you to answer that question.

Mr. MURPHY. But I will say that that applies to the commercial mutuals.

Mr. DINGELL. If that applies to the commercial mutuals, it applies then to all of these people that are doing business in the casualty field, and there is no difference one from the other. It is profits that they are looking for.

Mr. MURPHY. That is right.

Mr. DINGELL. They are in business the same as you are.

Mr. MURPHY. I agree with that.

Mr. DINGELL. The so-called stockholders and mutual policyholders do not have a thing to say about the policy established by the company or about anything else, or about the rates of pay to be paid those who are on the inside. Is that right? They do not have anything to say about it, do they?

Mr. MURPHY. I would say that the pretense that the policyholders own the company is just purely a legal fiction.

Mr. DINGELL. That is right.

Mr. MURPHY. And that they have no active participation in the company.

Mr. DINGELL. That is right.

Mr. MURPHY. Except in a small local neighborhood company, where they have sort of a town meeting.

Mr. DINGELL. That is right. And that is what makes the distinction between a mutual company and a commercial company. There are a bunch of farmers who get together and decide how much to pay in and how much to pay out. But you do not have that with the big companies. The stockholder or policyholder pays his premium. He does not have anything to say in the so-called mutual company on a large scale any more than he has in the U. S. F. & G. or any other insurance company, that is, liability insurance company.

My contention is that a lot of that sort of thing here is the bunk; that if they are in it for business, if they are in it for profit, I think they ought to be made to pay the tax. And I do not care whether that applies to Michigan corporations or not. If they are in it for business or for profit, we need the money and we are going to get it so far as I am concerned.

Mr. MURPHY. I think that that is the real distinction—whether they make profits or whether they do not.

Mr. DINGELL. What about that? Have you any idea about some of the salaries that are being paid in these magnanimous mutual concerns, Mr. Murphy? Can you give us any information for the committee on that point? If you do not have it available now, you might put it in the record. I think it would be interesting to the committee.

Mr. MURPHY. I do not have it available. So far as I know, it is not a matter of public record except in the individual tax returns, which, of course, at times in the past have been subject to public scrutiny, but which I understand are not now.

Mr. DINGELL. You are quite right there.

Mr. MURPHY. So far as I know, the State insurance departments do not require that information. But I have run across one or two very interesting things.

Mr. DINGELL. If it is worth while and you are permitted to tell us, you might do so.

Mr. MURPHY. It would be worth while to me.

Mr. DINGELL. Go ahead.

Mr. MURPHY. One spokesman who appeared before your committee last Thursday, according to this statement, which purports to be from an official insurance record, stated as follows:

> At a board of directors meeting held October 21, 1931, a contract was entered into between the company and Ekern & Meyers, of Chicago, Ill., a law partnership. This contract provides for payment to Ekern & Meyers, for the retention of their service in connection with general legal counsel and advice, a compensation based on three-fourths of 1 percent of all gross income received by the company from all sources during the period from June 1, 1931, to June 30, 1937, provided that moneys advanced to the company on surplus notes, interest income, salvage recovered, and premium deposits returned to members on account of cancelations during such period are to be deducted from and not considered as a part of the gross income.

According to the statement which I read, it says that—

> Assuming that the above contract was carried out, and insofar as we know it was, the amount collected thereunder by the firm of Ekern & Meyers from 1931 through June 1937, estimated on the basis of the premiums written by that company would amount to roughly $375,000.

Mr. DINGELL. For 1 year?

Mr. MURPHY. For 6 years. I believe that if that contract is still effective, the compensation last year would have been about $125,000.

As a matter of fact, many of the people connected with the large commercial mutuals have management contracts with the company, and that is where they make the real money, and it is through that method that they build up real financial and insurance empires, which threaten to be very, very much larger in the very near future.

Mr. DINGELL. But can you give the committee any information regarding some of the individual large salaries paid, for example, to the president and two or three or five of the vice presidents and the treasurer and secretary and the managers, and so forth and so on? Doubtless a mutual, so-called, that is writing from $10,000,000 to $44,000,000—I believe that that was one of the figures cited—in premiums annually, certainly must be paying some pretty substantial salaries; and I think it would be interesting for the committee to know something about how generous these mutual concerns really are with the premiums of the so-called mutual stockholders, because, obviously, if the money is going into salaries, it is not going back to the stockholders.

Mr. MURPHY. Mr. Dingell, I am afraid that we could not provide that information. I assume that the Treasury Department or the Internal Revenue Bureau could.

Mr. DINGELL. We may be able to get some of that as we begin to delve into this.

Mr. MURPHY. We could, of course, provide you with names, which would assist you, perhaps. But we cannot give you actual amounts, because, so far as I know, they are not of public record.

Mr. DINGELL. If you give us a few of those names, I will see if I can find out something about them.

Mr. MURPHY. I will be very glad to do that.

Mr. DINGELL. Because when anybody comes before the committee, I like to know whether he is imbued with this spirit of mutuality and helpfulness toward his fellow human beings to the extent that he is not in it for profit purposes.

I am not opposed to the profit motives, but I do not want to be mistaken about it. I want him to come over here and tell us that this is a business and not a charitable institution. I want to treat them all alike, with no pro bono publico work, as my lawyer friend tells me, whatever that is.

Mr. COOPER (presiding). Mr. Boland will inquire.

Mr. BOLAND. Mr. Murphy, in my community there is a small farmers' company with maybe nine or ten hundred stockholders in it, 99½ percent of the people in it are farmers. They have a paid secretary. They might do some of these things that Mr. Dingell was talking about, but they could not afford to pay very large salaries. Do you agree with that?

Mr. MURPHY. I agree with that, sir. And not only that, but as I have attempted to point out in my statement, the proposals made by the Treasury Department would exempt all of those small groups.

Mr. BOLAND. I see. That is what I wanted to get. I did not know enough about it, and that is why I asked the question.

Mr. MURPHY. If we can be of any help to you in providing information at any time, we will be glad to give it to you as practically as possible.

Mr. DISNEY. In your statement you referred to the fact that 43 companies wrote more than 10 times the volume of business written by the other 160 companies. In the main those 43 companies were the large commercial mutuals, were they not?

Mr. MURPHY. In the main; yes.

Mr. DISNEY. And the 130 were chiefly farmers' mutuals and smaller ones?

Mr. MURPHY. Those other companies which write less than $500,000 of premiums in any year.

Mr. COOPER. Mr. Robertson of Virginia will inquire.

Mr. ROBERTSON. I received a communication from a small Virginia mutual fire-insurance company, not in my section, but it does operate in three or four Virginia counties. It does not reinsure, and I understand that the operating expenses are possibly more than this $15,000 limit. Is that the limit?

Mr. MURPHY. $25,000. That was the net, I believe. That is the net income.

Mr. ROBERTSON. $25,000 net income?

Mr. MURPHY. Yes. That would be the net income after the payment of all expenses and losses.

Mr. ROBERTSON. What was the amount of insurance that they could write on any one property?

Mr. MURPHY. $50,000 in one risk.

Mr. ROBERTSON. Is that a necessary test, do you think, of a local company—that does not reinsure and does not go beyond two or three counties?

Mr. MURPHY. I do not know, Mr. Robertson, whether I could say that it is. I know this: that in appearing before the Senate Finance Committee upon this same point we suggested an exemption of $100,000 net income. That would certainly take care of some pretty good-sized companies.

Mr. ROBERTSON. And if they do not reinsure, there would not be any point in limiting them to $50,000, would there? I mean the local mutuals.

Mr. MURPHY. I think the point was that it would be a limitation if they did reinsure.

Mr. ROBERTSON. But I mean, if the company does not reinsure, there would not be any point in holding them down to a $50,000 policy?

Mr. MURPHY. I do not think that that is particularly vital.

Mr. ROBERTSON. As far as you are concerned, you would not bother them if they have a net income of less than $100,000?

Mr. MURPHY. I would not say that, quite. I would say that I would be willing to compromise on that basis if it were within my power.

Mr. COOPER. We thank you, Mr. Murphy, for your appearance and the information that you have given the committee.

The CHAIRMAN. The next witness is Mr. T. E. Swigart, Houston, Tex., representing petroleum pipe lines. Is Mr. Swigart here?

Mr. SWIGART. Yes, sir.

The CHAIRMAN. Come forward and identify yourself for the record.

STATEMENT OF T. E. SWIGART, HOUSTON, TEX., REPRESENTING PETROLEUM PIPE LINES CO.

Mr. SWIGART. I am Mr. T. E. Swigart, of Houston, Tex.; I represent the Petroleum Pipe Lines Co.

Please allow me to express my appreciation for the privilege of appearing here today as spokesman for a typical cross-section of the country's operators of petroleum pipe lines.

We fully appreciate the great responsibility with which you are confronted, and we can appreciate to some small extent at least, the perplexity of your problem of devising ways and means of financing the war effort. Our problem, on the other hand, is to operate our pipe lines with the greatest possible economy and efficiency so as to speed the flow of petroleum and its products to war industries at home and to the far-flung battle fronts abroad.

Operators of pipe lines are ready and willing to bear their proportionate share of the cost of the war but they feel that certain aspects of the special levy upon transportation by pipe line merit your consideration at this time.

As you know, the present act imposing this tax became effective in 1932, at which time a rate of 4 percent of gross transportation revenue was set. In 1940 it was increased to 4½ percent, and now the Treasury is proposing that it be further increased to 10 percent, which is the reason for my appearance here today.

First, I should like to sketch briefly the background of pipe lines in this country. From a historical standpoint pipe lines trace back to the earliest days of the discovery of oil. At first, oil was hauled in barrels on wagons and flatboats. To facilitate speedier and more economical movement, producers in the oil fields of Pennsylvania, with typical American ingenuity, developed an altogether new and novel means of transportation, namely, the pipe line. The first lines were crudely built of cast iron pipe, and by modern comparison were operated at very low pressure. Out of such origins developed the high-pressure steel lines of today.

From a most modest beginning the pipe line has developed to the point that it is the chief method in use in this country for transporting crude petroleum, and has now become an important method for transporting refined products as well. In recent years approximately three-fourths of all the crude oil which has been produced in the United States has arrived at refineries by pipe lines, and an appreciable part of the remaining 25 percent also moved some of the distance by pipe line. Gasoline pipe lines now serve areas containing 60 percent of the country's population.

In short, the pipe line is the dominant method of overland transportation of petroleum. Its economy is only exceeded by the oil tankers, but they can only operate along the Atlantic and Pacific coasts and on the Great Lakes, and thus cannot connect the oil fields with the large consuming centers in the interior. Moreover, most of the oil carried by tankers actually reaches them by pipe line and a large amount of the finished products refined from the crude originally transported by tanker is transshipped inland by pipeline. It is clear, therefore, that the pipe line does and always has played a leading role in the transportation of petroleum and its products.

At the moment, however, we are witnessing serious disturbances and difficulties in the transportation of petroleum and its products, brought about by attacks on our shipping and by the transfer of tankers to supply the rapidly increasing needs of our own armed forces and those of our allies throughout the world.

Under normal circumstances a large part of the supply of oil destined for the Atlantic seaboard, flows through a great network of pipe lines from oil fields of the Southwest to Gulf ports. There some oil is refined for East Coast consumption and the remainder is shipped as crude to eastern refineries. Normally, both of these movements are by tankers. This traffic amounted to about 1,600,000 barrels per day before our entry into the war, but the sinking of tankers and the need for tankers in other parts of the world has directed attention forcefully to overland transportation which is beyond reach of the enemy.

The phenomenal increase in railroad tank car shipments from the Southwest and Middle West to the East, from a negligible amount to almost 600,000 barrels per day is most noteworthy. It is conceivable that these shipments still may be increased by another 100,000 barrels per day. Even so, the remainder of the petroleum required on the Atlantic seaboard for the Army, Navy, Air Force, and essential industrial and civilian uses, is estimated at an additional 600,000 barrels per day, and it now appears that this petroleum must be moved chiefly by pipe line.

Existing pipe line facilities are so located and constructed that it is impossible for them to supply wartime needs on the Eastern seaboard without the assistance of tankers. Therefore, as a result of the tanker shortage, it becomes necessary to lay new pipe lines in order to cope with the present difficulty.

It now appears that a partial solution of this problem is for pipe-line companies to dig up certain lines and relay them in more strategic directions. This will be a very expensive procedure in all cases and in many instances will practically double the carrier's investment without increasing the mileage of the line involved.

The pipe lines are fully aware of the importance of complete mobilization of our natural resources, and steps already have been taken to bridge the gap in transportation. The 100,000-mile network of existing pipe lines is now supplying refining and consuming centers of foremost military and naval importance.

Even before our involvement in the war pipe-line operators had numerous projects under way which have increased their ability to move oil from the great reserves of the Southwest to Northern and Eastern States. These new pipe-line projects have released numbers of tankers for use across the Atlantic and in the Far East. A committee of pipe-line executives is now considering plans devised by engineers for digging up and relaying existing pipe lines so as best to fit them into a strategic plan for uninterrupted movement of petroleum. Such plans are being formulated without serious consideration of the dislocations which the changes will bring to the owners of the relocated lines. Every thought is being given to over-all war effort regardless of individual hardship, capital costs, and the probability that the relayed lines will not be economically useful after the war.

In summary, transportation is generally recognized as being the number one problem confronting the petroleum industry today. Considering the possibilities of further need for diverting tankers which are now engaged in coastwise runs to war service in the Atlantic and Pacific, the practical limits of tank-car shipments, and the relatively limited capacity of barge and towboat equipment available on inland waterways in comparison with the tremendous quantities of oil to be moved, it is fair to state that the pipe lines occupy the key position in petroleum transportation today.

It is the pipe lines' plea that the hardships, the serious dislocations and the expenses caused by the need of digging up existing lines and relaying them, as well as the required expenditures for new lines which, incidentally, will be very, very high and which will run into many millions of dollars, not be aggravated by higher taxation of their gross revenues.

This transportation is not levied on the transportation of oil or petroleum products by railroad tank cars. It is not levied on the transportation of oil or petroleum products by the boats that traverse our rivers and Great Lakes. It is not levied on the transportation of oil or its products by the ships and tankers that sail our constal waters. This tax is levied on pipe lines alone.

It is difficult to understand why one industry should be compelled to pay a Federal tax on exactly the same business that is being transacted by other industries without taxation. We are sure that no one in public life would suggest a tax on transportation by tanker at this particular time. Nor would such taxation of rail tank cars be entertained seriously. But the pipe lines which feed both tankers and tank cars are taxed, and now the Treasury is proposing that they be taxed more heavily, namely 122 percent more. That is from 4½ to 10 percent.

Such discriminatory taxation certainly cannot be justified on the grounds that pipe lines have benefited from public subsidies or similar aids from the Treasury. Over a period of years Joseph B. Eastman, the present director in the Office of Defense Transportation who long has been a member of the Interstate Commerce Commission and other public agencies identified with defense transportation, has been making extensive studies of this subject. To quote Mr. Eastman directly:

> Public aids to pipe lines have been altogether negligible * * * pipe-line transportation of petroleum, petroleum products, and natural gas appeared to be the one branch of transportation which has not received public aid.

In other words, the pipe-line industry, alone of all our means of public transportation, has never been and is not now a burden upon the Public Treasury. The taxpayers of the Nation have never been called upon to bear any part of the cost of construction or operation of the network of pipe lines that serve every section of our country. The pipe-line industry is not one of those public utilities that has to be supported at the people's expense, merely because it happens to perform an indispensable public service. I want to speak for a few minutes upon the effects of this tax.

While this tax is ostensibly levied upon the transportation of crude petroleum and liquid products by pipe line, in all practical effect it is not an excise tax in any true sense of the term but is a second or duplicate tax on the income of the pipe-line companies. Moreover, the tax is especially burdensome because it is based upon the taxpayer's gross income, instead of upon his net income, as is the case of other income taxpayers.

Now, being imposed upon the gross income of the taxpayer, the effect of the tax, if it is increased to 10 percent, undoubtedly will be to require pipe-line companies to pay larger gross income taxes, in the form of transportation taxes, and it is today the rule of taxation

that form must give way to substance, than they now pay as net income taxes. Surely no such result was contemplated by the Congress when it passed the sixteenth amendment in 1913, authorizing the taxing of net income only.

To show the effect of increasing this transportation tax upon the pipe-line industry, the following table has been compiled from the most recent record of the Bureau of Statistics, Interstate Commerce Commission, to compare the amount of transportation taxes at 10 percent, of four representative pipe-line companies with their Federal income taxes.

[All figures for the year 1940]

	Gross operating revenue (include nontaxable exports)	Transportation tax at 10 percent on taxable shipments (exports nontaxable)	Federal income and excess-profits taxes actually paid
A Co.	$32,765,571	$2,195,518	$3,061,611
B Co.	13,786,274	1,200,692	1,267,298
C Co.	14,784,505	1,455,880	1,271,000
D Co.	1,501,413	66,075	7,564

These four companies are truly representative. There are some big ones and some small ones.

It is quite apparent from the foregoing table that if the transportation tax in 1940 had been 10 percent, as now proposed by the Treasury Department, the transportation taxes of these companies would have exceeded the Federal income and excess-profits taxes which they actually paid, by a substantial amount. The comparison would be even more striking if the net income and excess-profits taxes quoted above were adjusted for the reduction in net income by the increased transportation tax.

Or, again, if we look at the pipe-line industry as a whole we find that it had gross operating revenue subject to transportation tax of approximately $172,000,000 in 1940, upon which the transportation tax computed at 10 percent would have been $17,200,000. This figure closely approximates, if it does not exceed, the total income taxes paid by the industry to the Federal Government in the year 1940. The exact figure is not published in the report of the Bureau of Statistics, but since the total income taxes paid to both Federal and State Governments by the pipe-line industry for 1940 was $20,000,000, the above comparison appears to be reasonable.

The proposed drastic increases in Federal taxes would impose a very serious burden on many members of the pipe-line industry. To more than double the amount of transportation taxes now being imposed would, in the case of certain pipe-line companies, change their operations from a profit to a deficit or substantially increase their present deficit.

Whether or not any deficit results, of course, depends upon each particular company, the volume of oil transported, the operating cost of the particular carrier, the amount of transportation taxes levied at 10 percent of gross receipts, and finally the amount of Federal income taxes assessible on net earnings.

I. C. C. reports show that more than 32 percent of all pipe-line mileage in the United States is located in Texas, so a study of Texas conditions is illuminating in determining the effect of this proposed tax increase. Practically all of these Texas lines terminate on the Gulf coast, and they are built to carry crude from inland points to the Gulf coast where the crude is either received by tankers and transported to the eastern seaboard, or refined into products, most of which are transported by tankers to the eastern seaboard. It is obvious that the present tanker shortage must necessarily result in drastic curtailment of pipe-line transportation in Texas. While the exact number of tankers sunk or transferred from this service is a military secret, the fact that tanker loadings on the Gulf coast have already dropped more than 50 percent is well-known. Of course, pipe-line transportation to the Gulf coast is suffering a proportionate loss and, as all of these lines depend largely upon tankers for an outlet, there is no relief in prospect for them. It should be observed that the recently increased rail shipments of crude do not benefit pipe lines serving the Gulf-coast area because such shipments originate largely in producing fields and not at Gulf-coast pipe-line termini.

To illustrate the probable adverse effect of the proposed increase in this tax, based on accurate forecasts for the year 1942, the following analysis of three companies is submitted.

Humble Pipe Line Co. is a good example, since it serves all of the principal producing areas in Texas, and for several years has transported approximately 20 percent of all of the oil produced in that State. During 1941, this company delivered 139,798,030 barrels of crude. During 1942, this company estimates that its total deliveries will be 110,507,584. Humble's actual net earnings during 1941 were $6,662,940. Due to the decrease in volume, and certain reductions in rates, this company's estimated net earnings for 1942 are $2,211,253, which is less than one-third of the earnings for the previous year. This figure is based on the present transportation tax. If the tax is raised to 10 percent, this company will earn only $1,578,616 during 1942, or less than one-fourth of the 1941 earnings. The I. C. C. has appraised the value of this company's properties as of December 31, 1939, at approximately $60,000,000, and this value should be enhanced considerably today. Thus, on its I. C. C. valuation, Humble Pipe Line Co. will only earn 2½ percent for 1942, if this tax be increased to 10 percent, and this is a dangerously low rate of return in this hazardous business.

Atlantic Pipe Line Co. is similarly situated. Its lines run from New Mexico and interior Texas to the Gulf coast. In 1941 this company delivered 36,755,000 barrels of crude. Under present conditions the company estimates that it will not deliver more than 23,523,000 barrels, a decrease of approximately 30 percent. Net income, after Federal income taxes for 1941, was $2,068,766. Even if the tax is not increased, net income for 1942 will be only $75,128, a decrease of more than 96 percent. If this tax is increased to 10 percent, Atlantic will show a loss of $40,240 for 1942. Furthermore, Atlantic Refining Co. has advised that it is faced with the necessity of shutting down its Atreco refinery in Texas. If this is done, Atlantic Pipe Line Co. estimates that it will operate in 1942 at a net loss of $503,639. If this tax is raised to 10 percent, this net loss will be increased to $612,428.

Sun Pipe Line Co. also operates almost exclusively in Texas. During 1941 that company delivered 15,971,495 barrels of crude oil. It estimates that for 1942 deliveries will not exceed 10,762,919 barrels, a decrease of about 33 percent. The estimated net income of Sun Pipe Line Co. for 1942, based on the present transportation tax rate of 4½ percent, will result in a deficit of $8,120. If the proposed 10-percent transportation tax is imposed by Congress, Sun Pipe Line Co. will experience a net loss of $85,172.

As already pointed out, the tanker shortage has caused a tremendous decrease in pipe-line tonnage in the Southwest. A further reduction looms because of the closing of refineries in that area. The Texas Co. has recently suspended operations at a refinery which has a capacity of 25,000 barrels daily, and it now appears that several other large refineries soon will have to shut down.

In view of the dependence of our military and naval forces upon our present method of transporting and distributing petroleum and its products by pipe line to every section of our country, it seems obvious that the Congress should carefully consider the adverse effects of imposing this additional tax burden upon the pipe-line industry. It has already been pointed out that the effect of this transportation tax would be to increase an already discriminatory tax by 122 percent. It has also been shown that this tax increase would throw a number of the pipe-line companies into serious operating deficits. The question and the problem before this honorable committee is whether or not it is wise thus unduly to burden an industry which is performing such an essential function in our war effort, simply to obtain additional transportation taxes estimated by the Treasury Department at $18,700,000 and which sum is but one-quarter of 1 percent of the total revenue sought to be raised.

Mr. DISNEY. Do you make a deduction of your excise tax against your excess-profits calculation or your income?

Mr. SWIGART. This is after the transportation tax. That is deducted before calculating the income. It goes in the statement as an expense item.

Mr. DINGELL. This proposal, of course, would give a great benefit to a competitive transportation line and a competitive fuel, would it not, at the expense of oil?

Mr. SWIGART. We feel that it is of benefit to our competitive means of transportation, Mr. Dingell.

Mr. DINGELL. As it is?

Mr. SWIGART. As it is now. And of course, this only exaggerates the benefit to those people.

Mr. DINGELL. It will widen the differential between them?

Mr. SWIGART. That is true.

Mr. DISNEY. Has there ever been any discussion with the I. C. C. about this tax when the transportation of tankers and cars is not taxed similarly? Has there been any discussion of that?

Mr. SWIGART. I cannot answer that. I do not know.

The CHAIRMAN. We thank you for your statement.

Mr. SWIGART. I wish to submit four exhibits in connection with my statement.

(The exhibits are as follows:)

APPENDIX A

Tank-car shipments

	Barrels
1941: Average daily tank-car shipments	40,000
1942:	
Jan. 1 to 15 daily tank-car shipments	68,002
Jan. 15 to 31 daily tank-car shipments	137,087
Feb. 1 to 14 daily tank-car shipments	239,890
Feb. 15 to 28 daily tank-car shipments	325,206
Mar. 1 to 15 daily tank-car shipments	437,140
Mar. 15 to 22 daily tank-car shipments	440,000
Mar. 22 to 28 daily tank-car shipments	506,028
Mar. 28 to Apr. 4 daily tank-car shipments	525,000

APPENDIX B

New major pipe lines

Portland-Montreal line—Portland, Maine, to Montreal, Canada, capacity 50,000 barrels per day.

Southeastern Pipe Line Co.—products line—from Port St. Joe to Chattanooga, capacity 30,000 barrels per day.

Plantation Pipe Line Co. from Baton Rouge, La., to Greensboro, N. C., capacity 60,000 barrels per day.

APPENDIX C

Company	Operating revenues	Amount of the increase in transportation tax to 10 percent	Net income 1940	Net income after increase in transportation tax
A	$152,527	58,388	519	48,349
B	1,036,434	57,114	38,969	96,183
C	53,256	2,929	45,798	48,651
D	1,080	100	8,707	8,818
E	1,236,582	61,166	30,802	90,586
F	1,342,149	70,870	24,636	95,374
G	7,424	408	166	214
H	1,351,413	37,088	81,445	18,137
I	2,124,768	116,965	1,111,836	1,228,761

Italic figures denote deficit.

APPENDIX D

Percentage of crude-oil production transported to refineries by different means

Calendar year	Pipe lines	Tanker	Rail tank car	Tank truck	Calendar year	Pipe lines	Tanker	Rail tank car	Tank truck
	Percent	*Percent*	*Percent*	*Percent*		*Percent*	*Percent*	*Percent*	*Percent*
1934	71.2	25.9	2.9	0.7	1938	73.2	24.3	2.5	.3
1935	71.2	26.2	2.6	.2	1939	72.9	25.6	2.2	.2
1936	71.3	26.6	2.1	.1	1940	72.3	24.7	2.4	.6
1937	71.1	25.6	3.1	.2	1941	74.2	23.2	[1] 2.0	[1] .6

[1] Partially estimated.

Sources of basic material: Crude Petroleum Reports by Refineries; Table 3, Total Domestic Deliveries and Total Receipts of Crude Oil, by Method of Transportation, monthly, U. S. Bureau of Mines; and Freight Commodity Statistics of Class I Steam Railways in the U. S., Interstate Commerce Commission, annual and quarterly.

The CHAIRMAN. The next witness is Mr. Henry B. Fernald, chairman, tax committee, American Mining Congress. Come forward and identify yourself.

STATEMENT OF HENRY B. FERNALD, CHAIRMAN, TAX COMMITTEE, AMERICAN MINING CONGRESS

Mr. FERNALD. I am Mr. Henry B. Fernald, chairman of the tax committee of the American Mining Congress.

I am not an oilman. I do not know the oil situation. But for mines we find nothing in Mr. Paul's statement which answers the showing as to the occasion and justification of the present percentage depletion.

On the new question that he raises as to mine development: As he points out at one place, mines do not have so-called intangible development costs with an option regarding them; but different rules are prescribed for mines, and mines have no option under those rules. This distinction at other points in his statement seems not clearly made.

He feels that mine-development expenditures are easily segregated from operating costs. But I say to you, out of the fullness of long accounting experience, that it is wholly impracticable to do this, which is a basic reason for the present regulations.

In appearing before you as a representative of the mining industry I first wish to state briefly the fundamental principles in accordance with which our recommendations are made. I believe our thought as to these principles is entirely in accord with that of your committee.

First: The first and foremost objective of industry and of Government today is and must be to furnish production for war needs. This is the paramount problem and duty. It involves not merely the production for this month or this year but for future months and future years, because much as we may hope to win this war quickly, we must prepare for a war of years rather than of months. Immediacy of production is of tremendous importance, but we cannot overlook the need of the continuous, vast production for several years. We must plan and work with this in mind.

Second: We must have an effective, solvent, industrial system left after the war is over. This we shall then need for the great work of restoration and reconstruction which will be required. This will be needed to yield the revenues which our Government will then require for its current needs and to pay for the war costs not met by the taxes of war years. Industry must be able not merely to continue but to expand, to give employment and livelihood to those who return from the war and to those who look for normal occupations when their war-production jobs are over. This second objective does not conflict with the first, because efficient, solvent industry at the conclusion of the war will be the efficient industry to serve effectively for a long war. There is necessary emergency diversion of industry from peace to war production, but this should be done without crippling the ability of industry to serve for a long war or to serve in peace after the war.

Third: The problem of currently raising taxes to meet the Government's need for revenues during the war period is important, but subordinate to the primary objectives. We need vast revenues not merely for this year, but for the post-war period. We must not recklessly and unwisely let desire for immediate revenues obstruct or interfere with the production of war needs or wreck our industrial system so it cannot serve through a long war or meet the post-war needs.

In planning for several years of war production, we are necessarily planning for years of war taxation. We must strive earnestly to keep industry strong, active, and efficient to yield production as well as to yield revenues. If we can do that for several years of war, we should come from the war with industry in shape for its post-war work.

We should make clear in our tax laws that we adhere to these principles. We should not include in new laws, we should eliminate from old laws features which would block, discourage, or impede full war production. We should not penalize those working for production of essential war needs by placing them in a worse position than those who are not so engaged. We can rightly impose heavy taxation on those who are making excessive profits, whether directly or indirectly, from our war activities or from civilian activities. We can hardly hope for the fullest possible participation in the war effort if we discriminate against those who produce goods for or furnish goods to the Government. Throughout our tax plans we must strive to have them apply fairly and equitably. The higher the tax rates, the more careful we must be to see that the bases to which or upon which those rates apply are fair and equitable. Points which were of minor importance at low rates may become grievous injustices when rates are higher.

In this spirit we urge on your attention some of the technical features of our tax laws which we feel interfere with these fundamental objectives both from the production and from the long-term revenue standpoint.

There are two special features particularly applicable to mines which I would mention—depletion and unit-of-production credit in computing excess-profits taxes.

The reasons for continuing the present percentage depletion provision have already been so fully submitted to your committee that I simply record here our position that percentage depletion for the mining industry should not be denied, abridged, or further limited.

Excess-profits credit based on profit per unit-of-mine production: As recognized in depletion, mines realize profits only through disposing of their capital assets. For the ton of ore in the mine, as for any other capital asset, the profit can be realized but once. Any part of the capital assets realized upon in 1 year cannot be realized upon in another. Whatever tonnage of ore is realized upon during the emergency curtails the profits which can be obtained in future years.

In this, mines differ from the ordinary manufacturing or trading business. The raw materials a manufacturer purchases this year and the profits he makes upon them are not expected in any way to limit or curtail the materials available to him for purchase and manufacture in subsequent years nor to limit his future profits. The trading concern which purchases and sells goods does not expect that its purchase and sale in this year will limit its purchase and sale of goods in future years.

Ore in the mine is not thus replaceable, and what is removed this year limits what is available in future years. This is recognized by

depletion so far as concerns the capital element. That capital allowance we rightly recognize is not to be considered as income and not to be subjected to tax as income. Only after appropriate depletion allowance is there income to be subjected to income tax or to excess-profits tax. This, I believe, we are already agreed upon.

The excess-profits tax, however, raises a further point. The excess-profits tax naturally should apply only to net income, and then only to so much of the net income as is in excess of normal earnings.

Our present law recognizes a credit for normal earnings determined from a standard of base-period earnings or from a standard of a percentage of return on invested capital, with limited provision for special determination in meritorious cases where neither the base-period earnings nor the percentage on invested capital fairly measure the normal earnings for which the excess-profits credit should be given.

The present provisions for such credit of a fixed annual amount, regardless of volume of production, do not work out fairly in many cases as an allowance for the normal profits of mines.

For example, using the profit per ton as the fair measure of profit per unit, but recognizing that in some cases profit per pound or per ounce of metal production would be the appropriate unit to use, if the mine during the base period had produced an average of 100,000 tons of ore a year at $1 per ton average profit, $100,000 net income per year, this amount of $100,000 would be the basis for its excess-profits credit determined on base-period earnings. If in the excess-profits year the mine does not increase its production, it will have its allowance for $1 per ton of normal profit. If it produces only 100,000 tons and makes not more than $1 per ton of profit, it will not be subject to excess-profits tax; or if it makes $1.40 a ton on 100,000 tons, it will pay excess-profits tax on the excess 40 cents a ton, or $40,000 of profits.

So far this seems a fair and appropriate rule. In such a case as this, where production is not increased, the mine will have an excess-profits credit equal to the normal profit on production.

If, however, the mine should increase its production—as it must do if it possibly can to meet the demand for maximum production for war needs—then it finds that not only the excess profit but also the normal profit from the increased production will be subjected to the excess-profits tax.

If in our example the mine produced 150,000 tons of ore and made only the normal profit of $1 a ton, its credit under present law would be limited to the normal profit on its normal production of 100,000 tons, but the $50,000 of normal profit on the additional tonnage would be treated as all excess profits and subject to the excess-profits tax.

If on the 150,000 tons production it made $1.40 per ton, under present law the excess-profits tax would be applied not merely to the additional 40 cents per ton profit, but also to the normal profit of $1 per ton on the 50,000 tons increased production.

This is the situation intended to be remedied by the amendment which Senator Johnson of Colorado proposed last year when the 1941 bill was before the Senate. No action was then taken, on the assurance that this subject would receive particular consideration in the next revenue measure. The proposal of the Johnson amendment was simply to make available to mines an excess-profits credit equal to the normal profit per unit.

Under such a provision, in the example cited, the mine with its basic credit of $1 per ton might receive this credit on its total tonnage of production, so that if it did produce 150,000 tons at $1 per ton profit, it would have its full excess-profits credit of $150,000 and would not be subject to excess-profits tax. If on its 150,000 tons production it made $1.40 per ton, a total of $210,000 profit for the year, it would apply its $150,000 credit, at $1 per ton on 150,000 tons, and its excess profits of $60,000, at 40 cents per ton on 150,000 tons, would be subject to the excess-profits tax.

We are confident that the present law's application in such a case was entirely unintentional and is contrary to Congressional policy. The Government is asking, and rightly asking, that mines do their utmost to produce in this year the ore and the metals or minerals which normally would not be produced until in some future year. This the mines are trying to do. They ask not to be penalized for taking from their mines in this year the ore which, on a normal scale of production, would be mined in a future year, and if thus normally mined would not be subject to excess-profits tax, except to the extent that the profit per unit were in excess of normal.

Some mines may not need this credit. Mines which cannot increase production over that of the base period; mines which have ample base-period earnings credit; others which have ample invested capital credit, may not be subject to this injustice. But many, particularly of the smaller mines, do not have either a credit on base-period earnings or a credit on invested capital which will be adequate to give a fair allowance for normal profit on increased production.

There is also the problem of new mines or mines which were shut down or operating at a greatly reduced capacity on a noncommercial basis in the base period. The Government is making every endeavor to get new mines opened or old mines into maximum production.

For mines which do not have an already established normal profit per unit, it will be necessary for the tax authorities to make a fair determination of what would be the reasonable normal unit profit as a basis for such an allowance.

There are also mines which during the base period were not being operated on a profit basis as separate entities; for which also there should be the determination of a fair normal profit per unit as independent mines.

Such profit determinations will naturally involve the engineering judgment which mining engineers are quite capable of making and do regularly make. This will be far simpler than some of the present adjustment provisions in the law; much simpler than many of the legal and factual determinations which the law may otherwise require. In any event, these are determinations which the Commissioner would make and which, if made by him on anything like a fair and reasonable basis, would undoubtedly be conclusive upon the taxpayer. The taxpayer would be largely at the mercy of the Commissioner as to the amount of any such constructive allowances, but the Commissioner should be given authority to make such appropriate allowances where necessary in applying the unit-of-production credit.

I submit for the record a copy of the Johnson amendment and respectfully refer you to Senator Johnson's discussion of it which appears on pages 7483–4 of the Congressional Record of September 4, 1941.

We urge that the principle of this amendment be incorporated in the law and that it be given retroactive effect.

The mines which have heretofore gone ahead with increased production to meet the demands of the defense and the war situation, as many of them have in 1940 and 1941, are no less entitled for those years to the correction of an injustice which the law quite unintentionally did them.

The entire net income of mines would in any event be subject to normal and surtax. Actual profits would be subject to excess-profits tax, but such an amendment as this, in addition to present provisions, is needed to insure that the excess-profits tax shall in no event be imposed upon what are merely the normal mining profits per unit of production.

This is not a question of subsidy, but of removing a penalty which otherwise might be unintentionally imposed upon those who best do what the Government wants them to do in increasing production for war needs.

As to matters of general application which also affect mines, we commend the Treasury recommendations with respect to the following points:

As stated for the Treasury by Mr. Paul, "wartime rates make is imperative to eliminate as far as possible existing inequities which distort the tax burden of certain taxpayers." We commend the spirit of this statement and the following recommendations which the Treasury made:

1. The capital-stock tax and the related declared value excess-profits tax should be repealed.

2. Consolidated returns should be permitted for income as well as excess-profits tax. But we urge there should be no differential in tax rate applied.

3. Recoveries of bad debts and taxes should only be considered as income if and to the extent that their deduction in a prior year produced a tax benefit.

4. Statute of limitations on bad debts and worthless stock losses should be extended to allow for refunds where there is question of the proper year for the deduction; and the present charge-off requirement as to bad debts should be eliminated.

5. Use of the "last-in, first-out" inventory method should not be contingent upon the particular form of interim or other reports issued by the taxpayer.

6. Further relief should be afforded where the earnings of the base period were abnormally depressed.

Supplementing these particular recommendations, which the Treasury has stated "do not exhaust all the changes which we believe should be presented to the committee," we urge the following as also falling under the classification of hardships and inequities which should be remedied under these high tax rates:

As to invested capital, the taxpayer should not be denied the cost basis for property as invested capital merely because the property was acquired in some particular form of exchange or reorganization when there was no thought or consideration of a possible future invested capital determination.

The basis for computing gain, rather than the basis for computing loss, should be used as the basis for property under section 718 and section 720.

Depreciation or depletion adjustments should be those appropriate to the unadjusted basis which is used.

The deduction under section 718 (b) (1) should be for the distributions which are not out of "earnings and profits" instead of those not out of "accumulated earnings and profits" to clarify the law and avoid possible question.

Daily computations should not be required, or the Commissioner should be given broad authority to waive the requirement.

Borrowed capital should be fully included in invested capital.

Special relief: Special relief should be granted as to invested capital as well as to income; to corporations formed after as well as before or during the base period; without penalty tax where special relief is granted; with limitations of tax initially payable where special relief is bona fide claimed.

Revision of supplements A and B: Among the points for revision in these supplements, we urge that the definition of "acquiring corporation" should be broadened; differences in fiscal years of corporations should be fairly adjusted; the entire net income or constructive net income for the taxpayer and its components for the entire base period should be included; the transferee provisions of supplement B should be revised.

Section 734 regarding inconsistencies should be repealed, since it is unfair, unjust, and oppressive as it now stands; and in no event does it have an appropriate place in determining the excess profits which should be subject to excess-profits tax.

The exemption from excess-profits tax for strategic minerals should be restored.

The amortization provision of section 124 should provide for allowance for necessary facilities which may not have been completed at the termination of the emergency need for them. Also, it should specify, as seems clearly its intent, that mine-development expenditures may be subject to amortization.

The income tax should be allowed as a deduction in determining excess profits as was done under the 1940 act. The amount which the taxpayer will be required to pay as income tax to the Government should not be included in the amount on which it must pay an excess-profits tax.

The rate schedule should be stated by brackets based on percentages of the excess-profits credit and not merely according to the dollar amounts of the present law.

The net operating loss carry-over should be extended to at least 5 years.

Interest on deficiencies should be at a rate not to exceed 3 percent.

As to distributions out of March 1, 1913, surplus and increase in value, we join with others who oppose the Treasury recommendation to abolish the present provisions under which such distributions are not deemed taxable income to the stockholder.

The long-established principle of recognizing pre-1913 earnings or values as not constituting taxable income should be retained.

We further note that one of the reasons for writing into the law the present provisions for determining which distributions by corporations should be considered taxable and which should not be considered taxable to stockholders was to remedy the chaotic situation with regard to this question which existed before these provisions were written into the law. To repeal them now would introduce far greater complexities in the situation than now exist.

We again urge, as we have heretofore urged, that there should be the utmost economy in all Government expenditures which are not absolutely essential for the war.

We commend what the chairman and members of your committee have done toward this end and urge that those efforts be continued. When pressed to raise revenues for the necessary war expenditures and to make our immense borrowings for those purposes, we are not justified in either taxing or borrowing for nonessentials. Furthermore, it is hard to ask our people to deny themselves to pay taxes and to buy bonds if they see Government funds being expended unnecessarily and without regard to the war needs.

In conclusion, it seems necessary to mention proposals for profit limitations which, although not pending before this committee, will vitally affect the problems you are considering.

Through you we urge that Congress consider these proposals as they bear on our fundamental principles: Will they help and hasten war production or will they hurt and delay it? Inevitably, placing on those who take Government contracts special limitations or penalties not applying to those who do not try to meet the special war need, will tend to hurt war production. This is contrary to our first objective.

Furthermore, limiting profits to a percentage of cost of production means that the higher the cost the greater the profits. This places a penalty on economy and efficiency in production, encourages carelessness, extravagance, and delay, and generally introduces the vices of the old type of cost-plus contracts which have been so strongly condemned. The administrative problems of accounting and auditing and settlement of disputes will be interminable. Neither the producer nor the Government will know what should be considered the contract cost until standards are set up adequately to cover every possible situation and until audits have been completed, with determinations not merely of direct cost but of overhead allocations for each contract. This will be bad enough in cases where the entire production goes on Government contracts; far worse where part of the production will be subject to and part not subject to Government contracts. Even the limitation of profits on Government contracts to a percentage of selling price is subject to many, if not all, of these objections.

Of course, procurement officials should endeavor earnestly to make prudent, reasonable contracts for production or supplies, but prompt and effective procurement and speedy and efficient production should have precedence over debates regarding cost details and allocations.

We take this opportunity to add our testimony to that of the war authorities, the Price Administration, and the Treasury, that proposals to fix by law arbitrary percentages to be allowable on Government contracts will hurt rather than help the war effort; will, as the old cost-plus contracts did, promote rather than curb inflation; and will present a problem impossible of satisfactory administration if we are to have the war effort which is essential.

If profits are excessive, the excess-profits tax should recapture them and the excess-profits tax should be framed so it will do this effectively but fairly, whether profits come from Government contracts or otherwise.

This concluding thought is entirely in accord with the rest I have said as to the bases for a tax at high rates which shall equitably and effectively reach or discourage any real excess profits whatever their source.

(The Johnson amendment referred to is as follows:)

[From the Congressional Record, September 4, 1941, p. 7482]

AMENDMENT PROPOSED BY SENATOR JOHNSON OF COLORADO TO SECTION 713 OF THE INTERNAL REVENUE CODE

(h) Corporations engaged in mining—

(1) A corporation engaged in the mining of natural deposits shall be entitled under this section (with respect to its mining operations) to an excess-profits credit equal to the normal profit per unit of production for its entire production during the taxable year, in addition to such other excess-profits credit as may be allowable under this subchapter which is properly allocable to its operations other than mining.

(A) In the event that the taxpayer was actually in existence at the beginning of its base period and was, during all or a part of such base period, engaged, on a commercially profitable basis, in mining operations similar, except as to the volume of production, to those carried on during the taxable year, then the taxpayer's normal profit per unit of production during the base period (excluding the year or years in which there was a deficit in excess-profits net income) shall constitute the taxpayer's normal profit per unit of production for the purposes of this subsection. In computing such normal profit per unit, the adjustments provided by section 711 (b), so far as applicable, shall be made.

(B) If the taxpayer was not in existence at the beginning of its base period or if it was not, during all or a part of such base period, engaged, on a commercially profitable basis, in mining operations similar, except as to volume of production, to those carried on during the taxable year, then the normal profit per unit of production shall consist of the base period profit per unit of production which the taxpayer would have realized if it had been so engaged during such base period. Such normal profit per unit shall be computed by assuming that the taxpayer had sold in each year of the base period the number of units which it could have produced and sold, with due regard to the average prices and costs of operation prevailing in each base period year, except that the number of units assumed in such computation for any base period year shall not exceed the number of units sold in the taxable year.

(2) The term "base period" means, for the purposes of this subsection, the base period as elsewhere defined in this subchapter, but if the base period of a taxpayer is not elsewhere so defined, in such case the term "base period" means the calendar years 1936 to 1939, inclusive.

(3) This subsection shall not apply if the excess-profits credit computed under section 713, without the application of this section, or under section 714, exceeds the amount of the credit computed under this subsection.

The CHAIRMAN. The next witness is Mr. James A. Bentley, vice president of the Carrier Corporation, Syracuse, N. Y., representing the tax committee of the Air Conditioning and Refrigerating Machinery Association. Come forward, Mr. Bentley, and identify yourself for the record.

STATEMENT OF JAMES A. BENTLEY, VICE PRESIDENT, CARRIER CORPORATION, SYRACUSE, N. Y.

Mr. BENTLEY. I am James A. Bentley, vice president of the Carrier Corporation, Syracuse, N. Y., appearing on behalf of the Air Conditioning and Refrigerating Machinery Association.

I wish to make an offer of a fair bargain to the committee. I am speaking in connection with section 3405 of the excise-tax legislation, which applies to our industry.

This fair bargain, if adopted, would result in the Government saving substantial money and the diversion of time of Government personnel, and would result in the saving to our industry of a great many headaches.

The problem, briefly, is that section 3405 formerly taxed only the self-contained types of refrigerating equipment. However, the 1941 amendment brought in self-contained air conditioners, as well as many components of industrial and commercial refrigeration and air-conditioning equipment.

The phraseology referring to industrial and commercial components is ambiguous. On many questions, the Bureau of Internal Revenue has been unable to give us clear rulings.

It would be difficult, and in some cases impossible, adequately to define what are taxable components.

We are faced with endless questions from customers and from the Bureau of Internal Revenue, with litigation, and with years of holding questionable amounts in abeyance.

The sale of the industrial and commercial equipment is now almost solely for war effort, generally for use by the Army, the Navy, the Maritime Commission, and other Government agencies.

There will be, therefore, little tax return during the war. The tax return from industrial and commercial equipment has averaged only $220,846 per month so far, even though civilian uses have been substantial until recently.

From now on, the tax return cannot conceivably equal the cost to the Government represented by the vast amount of paper work required for exemption certificate procedure, and so forth, which must be carried out by the many Government purchasing offices throughout the country. This waste brings no profit to anyone.

We propose the following amendment of section 3405 (the words in the present statute which are to be deleted are stricken through in brackets, words which are to be added are stated in capitals):

SEC. 3405. TAX ON REFRIGERATORS, REFRIGERATING APPARATUS, AND AIR CONDITIONERS.

There shall be imposed on the following articles (including in each case parts or accessories therefor sold on or in connection with the sale thereof) sold by the manufacturer, producer, or importer a tax equivalent to 10 percent of the price for which so sold,

(a) *Refrigerators, etc.*—Refrigerators, beverage coolers, ice cream cabinets, water coolers, food and beverage display cases, food and beverage storage cabinets, ice making ~~machines~~ CABINETS, and milk cooler cabinets, each such article ~~having, or~~ BEING OF THE SELF-CONTAINED TYPE ~~being primarily designed for use with, a mechanical refrigerating unit~~ operated by electricity, gas, kerosene, or gasoline.

(b) [~~*Refrigerating Apparatus*~~]~~.—Compressors, condensers, evaporators, expansion units, absorbers, and controls, for, or suitable for use as part of, or with, a refrigerating plant, refrigerating system, refrigerating equipment or unit, or any of the articles enumerated in subsection (a).~~

(c) *Air-Conditioners.*—Self-contained air-conditioning units.

(d) [~~*Components*~~]~~.—Cabinets, compressors, condensers, fans, blowers, heating coils, cooling coils, filters, humidifiers, and controls, for, or suitable for use as part of, or with, any of the articles enumerated in subsection (a).~~

The above amendment would confine the tax to the self-contained type of equipment. This would eliminate the industrial equipment which is the portion involving the ambiguities, some of which are impossible to clarify, but would not eliminate any revenue profitable to the Government.

As the statute stands at present, the tax is impossible accurately to determine, expensive to collect, and uneconomic in its net yield to the Government.

Our proposals arise primarily as a result of our actual everyday experience with the difficulties and expense of interpreting, applying, and accounting for that part of the present tax which applies to commercial and industrial refrigerating and air conditioning equipment.

We have no means of determining the cost to the Bureau of Internal Revenue of administering this tax on commercial and industrial refrigerating and air conditioning equipment, but we know that the cost will be high. Already it has been necessary for the Bureau to exchange with this association 69 letters respecting rulings on the application of the tax to different circumstances. At least 23 oral conferences with the Bureau have been required as a part of such inquiries. Some of these conferences have consumed an entire day. These figures make no accounting for the many inquiries and contacts with the Bureau which have been required of the individual members of this association or of the industry.

The resulting amounts of time and study required of the Bureau's policy-making and administrative officers have been very great. The difficulties and disputes which may be expected to arise from an audit of the returns are calculated to be even more frequent and more consuming of time and thought.

The most serious cost in administration arises from the exemption certificate which is required when the equipment sold is for the use of a governmental agency. These certificates are made out by a number of persons who have little or no knowledge of the requirements for the issuing of such certificates. Because such persons are inexperienced in this type of paper work, protracted delays result before the certificates are issued and the equipment can be delivered. The difficulties, complications, and delays are particularly acute where, as is most usually the case, the sale is not made directly to the governmental agency but is made through an intermediate contractor or series of subcontractors. The time lost by suppliers, installers, and Government employees who should be devoting themselves to productive effort is substantial.

It should hardly be necessary to add that the time, effort, and attention required do not aid the war effort, nor produce revenue for the Treasury. The endless detail and discussion are an economic waste to the producer, the consumer, and the Government.

As examples of difficulties inherent in determining whether a tax attaches to a given sale, we might mention the following:

Subsection (b) of section 3405 provides for a tax upon "evaporators" "for, or suitable for use as part of, or with, a refrigerating plant, refrigerating system, refrigerating equipment or unit, or any of the articles enumerated in subsection (a)." The word "evaporator" is defined by the American Society of Refrigerating Engineers as "that part of a system in which refrigerant is expanded or vaporized to produce refrigeration." A pipe coil, when used in cold storage for direct expansion, may be an evaporator; but the identical coil might be used on a brine or cold-water job. The identical pipe coil, at the moment it is sold by the manufacturer, might be used for heating purposes in nonrefrigerating work. Are we going to say that all pipe coil, no matter what its intended use may be, is to be taxed merely because it could be used as an evaporator? Is a manufacturer to be denied the right to show that neither he nor anyone else intended his pipe coil to be used for an evaporator or any other refrigeration purpose and that his pipe never was so used? Is he to be taxed for something which has nothing to do with refrigerating or air conditioning? On the other hand, if one manufacturer is permitted to make such a demonstration on one article, on what just ground can the same right be refused to all manufacturers on all articles? If such a right is conceded, who can measure the size of the administrative task?

The same types of questions which arise with respect to evaporators may be raised respecting other components mentioned in subsections (b) and (d) of section 3405.

Take also, for example, the phrase "ice-making machine" used in subsection (a) of section 3405. What is an ice-making machine? Is it a compressor? Is it an ice-making cabinet? Is it something self-contained, or is it every item which may be used in a plant in which artificial ice is produced? If an "ice-making machine" does not cover the entire plant, just what part does it cover? How are these questions to be decided without dispute, argument, and, where the amount involved warrants, litigation? The situation could not be better illustrated than by the following sentence (from a letter to our association's counsel sent November 28, 1941, by the Deputy Commissioner of Internal Revenue) reading:

> The term "ice-making machines" is not susceptible of general definition. However, rulings will be issued with respect to the taxability of any ice-making machine upon receipt of a description of the article.

The Bureau is unable to escape the necessity of innumerable individual rulings.

Another difficulty is ascertaining what is taxable or how much the tax should be when taxing an assembly of parts, as distinguished from taxing a recognized unit or "package." In many cases only one item in a large assembly of parts may be taxable. Inasmuch as the entire assembly, however, is sold for a lump sum, it is necessary, if the percentage tax is to be computed for the one item, to assign to that item an arbitrary proportion of the sales price of the entire assembly. In this process, differences of opinion may and do arise. Disputes are to be expected and, where the amounts involved are substantial, the disputes will be prolonged.

So long as this tax remains in its present form there is no escape from the administrative problems which the examples I have mentioned illustrate.

Against the expense already demonstrated and the greater expense to be expected in the future, for both Government and taxpayer, the receipts from the tax (for the first 4 months) should be considered. The receipts appear to be approximately as follows:

November 1941, $1,460,569; December 1941, $1,608,145; January 1942, $1,503,154; and February 1942, $1,604,144. This makes an average per month of $1,543,498. Only a small portion of this would be affected by the proposed amendment.

It will be observed that the receipts from this tax, even under the conditions obtaining in the first 4 months of its application, were running at the rate of only approximately $18,000,000 per year.

In the future, revenue to the Government from these sources can be expected to become less and less each month, and almost stop, as sales for non-war-effort uses are increasingly restricted. It is estimated that, at the present time, of the industry's output of commercial and industrial refrigerating and air-conditioning equipment, more than 95 percent, by dollar volume, is sold on a high-priority basis. Much of this sales volume is represented by direct purchasing by the Army, Navy, and Marine Corps, and by sales for the use of the Maritime Commission, Defense Plant Corporation, Lend-Lease Administration, and other Government agencies having primarily to do with the prosecution of the war. The present tax revenues to the Government from the operation of section 3405 of the Internal Revenue Code not only are diminishing but probably will virtually disappear.

However, the expense and diversion of personnel, by Government and industry, in making returns, keeping records, and deciding upon the taxability of given items will continue.

If the system of selective excise taxes is to be continued, then substantial changes should be made in the principles upon which the present statute rests. In the first place, the system should be based upon taxable units which are simple to ascertain and which permit of ready agreement between administrator and taxpayer as to their taxability. A self-contained unit, readily discernible and commonly accepted as a unit, is the requisite element in any tax on the sale of articles. We have pointed out how difficult it is, even where it is agreed that an article is taxable, to allocate a part of the sales price to that article when the article is part of an assembly and not a "packaged" unit in itself.

In the second place, the article to be taxed should be defined in terms which avoid, so far as possible, a reference to the use which is to be made of the article. As soon as the question of use enters into the determination, if the article taxed has a variety of commercial uses outside the field upon which the excise is to apply, administrative difficulties and disputes are inevitable.

As we have indicated, the use of the phrase "for, or suitable for, use as part of, or with," appearing in subsection (b) of section 3405, frequently causes dispute with respect to a given article and results in taxing an article which isn't intended for use and isn't used in the field of industry to which the tax applies. If, for instance, Congress intended to tax pipe coil when used in the refrigerating and air-conditioning industry, it seems grossly unfair to tax pipe coil which was intended for and was actually used in a heating plant unrelated to air conditioning or refrigeration. Disputes as to "suitable for use" are unavoidable. Quarrels arise among buyers and sellers as to which articles are taxable and as to which sales require a tax to be collected, deducted, or withheld. If the amounts involved warrant the contest, litigation follows; sometimes between sellers and buyers, but more frequently between the Government and the party to the sales transaction which is believed to be responsible for payment of the tax. Funds may have to be held in escrow for years. The economy, both public and private, suffers.

In the past, attempts have been made to narrow the field of dispute respecting "use" by putting the test on the design of the article involved; that is, by taxing only that article which is primarily designed for a given use. Then the test as to the tax liability of an article is whether it is designed for the single taxable use or whether it also has a commonly accepted use in fields other than that upon which the tax is levied. Heretofore the difficulty with such a standard has been that, in many instances, the administrators have been loath to admit that the article in question had a variety of commercial uses beyond use in the field to which the tax applied. The consequence has been litigation as to what the fact might be. Wherever the tax rests ultimately upon the use for which an article is suitable, designed, adapted, or intended, administrative difficulties and "headaches" may be expected.

The proposed amendment would cure the above-mentioned difficulties.

It remains merely to be added that the elimination of excise tax on commercial and industrial equipment involves, in the case of section 3405, only a relatively small amount of tax. Our survey indicates that the tax receipts for the first 4 months may be divided as follows:

Month	I From sales of household refrigerators	II From sales of self-contained units other than household	III From sales of commercial and industrial refrigerating and air-conditioning equipment
November 1941	$1,315,337	$141,586	$89,684
December 1941	992,394	226,750	414,961
January 1942	1,109,638	139,848	252,649
February 1942	1,416,137	66,919	127,192
Average per month	1,209,888	121,762	230,846

NOTE.—The proposed amendment would eliminate only column III.

A survey of the commercial and industrial refrigerating and air-conditioning machinery industry indicates that in the 4 months' period specified above the cost to the manufacturers, in keeping accounts and records and in making the required returns, has totaled approximately 10 percent of the receipts from sales of commercial and industrial refrigerating and air-conditioning equipment. This makes no allowance for costs to the manufacturers which may be expected when the Bureau of Internal Revenue makes its audits. We don't know what the cost to the taxpayer is in keeping his records and in making his returns of other kinds of taxes, but it seems to us that a ratio of 10 percent is very high. If the cost to the Bureau of Internal Revenue of inspection, audit, and discussion and the cost to the Government agencies of furnishing exemption certificates are added, the administrative load seems disproportionate to receipts.

Industrial equipment of other types is not usually subject to excise tax. Therefore, discrimination is also involved, although we are not making a point of this fact.

Because of the principles just explained, there should be eliminated from subsection (a) all reference to the use for which the articles taxed are designed. Also, if "ice-making machine" were changed to "ice-making cabinet," the term would refer to "packaged" entity, identifiable as such, and not to a mere machinery assembly or plant. We, therefore, propose that subsection (a) be amended to read (the words in the present statute which are to be deleted are stricken through in brackets; words which are to be added are stated in capitals):

(a) *Refrigerators, Etc.*—Refrigerators, beverage coolers, ice cream cabinets, water coolers, food and beverage display cases, food and beverage storage cabinets, ice making [~~machines~~] CABINETS, and milk cooler cabinets, each such article [~~having or~~] BEING OF THE SELF-CONTAINED TYPE [~~being primarily designed for use with, a mechanical refrigerating unit~~] operated by electricity, gas, kerosene, or gasoline.

Because virtually all of the equipment subjected to tax under subsections (b) and (d) of section 3405 has commonly accepted uses in other mechanical fields, it would be exceedingly difficult to levy any excise tax upon such equipment without resting that tax on a definition which involved the use to be made of the equipment. It is for this reason that we have been unable to develop any satisfactory amendment to these parts of section 3405 which will permit of the taxation of such equipment without encountering the administrative difficulties existent under the present statute. We, therefore, propose that these two sections of this statute be eliminated.

The articles taxed under subsection (b) of section 3405 are items of refrigerating apparatus used largely in the processing and storage of food, or for essential industrial uses such as the production of synthetic rubber, parachute cloth, vital chemicals, and so forth, as distinguished from luxury items. The nonnecessities are principally those taxed in subsections (a) and (c), to which, if a selective tax is to remain, we have no general objection, if amended as proposed.

We have no objection to subsection (c) of section 3405. The articles described in that subsection are self-contained and there is no difficulty in determining what is meant.

This amendment would result in no net loss of revenue to the Government, because the small reduction in taxes would be more than offset by the over-all reduction in cost of administration throughout the various departments, including Government purchasing departments.

So far as the refrigerating and air-conditioning machinery industry is concerned, it can be said with the assurance of conviction that a general tax on sales, gross or net, is clearly more economic and more efficient than any excise tax which rests upon statutory definition of articles to be taxed and administrative interpretation of such definition. The existing excise tax is fundamentally uneconomic and wasteful. In the interest both of the public revenues and of the welfare of the taxpayers, this tax should be repealed and a general sales tax substituted. However, the aforementioned amendment is offered as an alternative to complete repeal.

Our industry does not seek to reduce the amount of taxes it pays. We are not seeking to avoid our fair share of the tax which must be

collected if this war is to be won. But we are concerned that there be the greatest economic value from whatever tax we do pay.

The Internal Revenue Bureau has attempted faithfully to give us rulings that would enable us to apply the tax, but unfortunately, with little success. It is not the fault of the Internal Revenue Bureau. It has been beyond their control.

We have exchanged 69 letters with the Bureau. We have had many long conferences, some consuming an entire day. Despite that, we still do not know what is taxable and what is not taxable.

Mr. DISNEY. We taxed little boxes and units around the houses and last year we attempted to tax industrial units, and that created the difficulty. Isn't that right?

Mr. BENTLEY. That is right.

Mr. DISNEY. Those used in processing in canneries and in meat packing, the big boxes used in the various big industries, and that is what caused the difficulty. Is that a correct statement?

Mr. BENTLEY. Yes. And at the present time the tax applies to components of every type of industrial system, such as used in the synthetic rubber factory or the chemical factory.

Mr. DISNEY. And what do you propose?

Mr. BENTLEY. We propose, briefly, that if the excise taxation is continued on our industry, an amendment of section 3405 in phraseology which we have suggested, that would restrict the taxation to the self-contained type of air-conditioning and refrigeration equipment, the type of equipment that is easy to define, where there can be no ambiguities involved, and which would bring in the maximum of revenue.

An important point is that as a result of the first 4 months of experience the rate of revenue to the Treasury has been about $18,000,000 per year. However, of that total only about $2,700,000 has been represented by the commercial and industrial equipment. The tax revenue would continue on the self-contained type of equipment, which is the majority of the tax anyway.

Another point is that, now that we are in the war—and our industry, by the way, is devoting almost its entire attention to the war effort—the industrial and commercial equipment is confined almost entirely to war effort use, most of it being purchased directly by Government agencies, so that no tax is payable on that anyway. Therefore, even this $2,700,000 revenue per year that has been experienced to date would be diminished and would be almost negligible very soon.

Despite the fact that the tax revenue is becoming negligible on that type of equipment, the cost of administration to the Government and ourselves is continuing.

For example, take the exemption certificate procedure. One would think that this is a simple means of eliminating the tax on Government purchases. But, believe me, from my own experience, gentlemen, it is not simple.

The requirement for the preparation of this form represents anywhere from 5 to 10 steps on the part of the various Government purchasing agencies and others, depending on the type of case. Where a contractor or a subcontractor is involved, in the instance of one of these large plants, such as Mr. Disney mentioned, say a synthetic rubber plant or a black-out plant for bomber production, this must be made up by the Government purchasing agencies, who are not too familiar with the procedure, due to rarely having to use it, since it applies largely to industrial equipment. We have even had instances where the Government agency refuses to give the certificate until after delivery of the equipment.

The poor manufacturer cannot deliver the equipment in advance of the exemption certificate without being vulnerable to the tax; and yet the Government refuses to let us have it in advance. There have been actual delays of delivery on that account.

And finally there is no tax accruing to the Treasury. So it is all wasted effort.

Mr. DISNEY. And in the meantime it might spoil the deal unless the purchaser knows what he has to do?

Mr. BENTLEY. That is correct. And for that reason we maintain that even the small revenue that might accrue to the Treasury from industrial and commercial equipment is more than offset by the cost to the Government.

Mr. DISNEY. What is this $2,700,000 that you mentioned? What year is that for?

Mr. BENTLEY. That is for the 4 months' period since October 1, when the tax went into effect. It would be at the rate of $2,700,000 if that had continued. However, it is now on a diminishing scale due to Government usage. You see, for the first 4 months we were still doing some civilian business in industrial and commercial equipment, while now it is almost 100 percent Government usage or direct war effort and Defense Plant Corporation, for example.

Mr. DISNEY. What usage?

Mr. BENTLEY. Air conditioning, for example, for use in the production of many vital chemicals, pharmaceuticals and drugs, all necessary for the direct war effort.

These black-out plants which have no windows must be air conditioned. Plants working on close tolerances for the production of airplane engines, for example, must be air conditioned in order to permit that close tolerance work.

Mr. DISNEY. You mean to control the temperature?

Mr. BENTLEY. The temperature and the humidity. When I say "air conditioned," I mean complete control of the temperature, which involves heating in the winter or cooling in the summer, and the correct moisture content of the air, which means adding moisture in the winter or removing moisture in the humid summer days; the purification of the air, and a proper circulation of the air.

Contrary to public conception, air conditioning was founded on industrial applications rather than so-called comfort applications.

Ordinarily we think of air conditioning as a room cooler or the conditioning for a building of this type, for example, while the great majority of usages are for vital industrial purposes.

Mr. DISNEY. It is used in synthetic rubber plants, is it?

Mr. BENTLEY. Yes.

Mr. DISNEY. What about oil refineries? Do they use it?

Mr. BENTLEY. Yes. We pioneered in the production of synthetic rubber in this country. The first synthetic rubber was a part of the pioneering effort of our application of refrigeration.

Mr. DISNEY. What is it that you propose to tax?

Mr. BENTLEY. We prefer that section 3405 be repealed, and that some form of taxation more easily applicable be applied, such as, for example, a general sales tax.

We have no objection to paying taxes. On the contrary, we feel that there should be more taxes than are now being paid, because, after all, we have a war on our hands.

All that we are objecting to is an uneconomic method of attempting to collect revenue. I say "attempting" advisedly, because it is not even resulting in revenue as the attempt is being made today.

Of course, we do have a selfish motive of eliminating headaches for ourselves. But if the constructive results can be obtained, we think that we might also be entitled to avoid some headaches.

The CHAIRMAN. We will take an adjournment now until tomorrow morning at 10 o'clock.

(Whereupon, at 4:55 p. m., an adjournment was taken until tomorrow, Friday, April 17, 1942, at 10 a. m.)

×

April 16, 1942
12:45 p.m.

Operator: Mr. Paul.

HMJr: Right.

Operator: Go ahead.

HMJr: Randolph.

Randolph Paul: Yes.

HMJr: John is sitting here with me, and I've been handed a nice one by the President. Before I get to that, it went off pretty good this morning, didn't it?

P: I got very good reports of it. I thought it was a swell job, and I had a little difficulty hearing a lot of it myself, but I got the reporters' - several of the reporters talked to me and said it was a swell job.

HMJr: Well, Treadway's with us, and Doughton and Walter George, so I guess it's in the bag.

P: Yeah.

HMJr: Now, this is a note from the President to me. "Congressman McCormack phoned in that in the Deficiency Appropriation Bill the House put in the six per cent limitation, and the Senate put in a more liberal limitation."

P: Yeah.

HMJr: "He says that the Speaker and the House conferees themselves all feel this is not a desirable way to legislate, to put any limitation of profits in an appropriation bill. It should be done through excess profits and the Ways and Means Committee, or through the Naval Affairs Committee, after full consideration of all factors involved. McCormack says that he, the Speaker, and the House conferees think that all provisions in the deficiency bill now in Congress should be stricken out.

The conferees are meeting this afternoon. Senator Barkley is out of town, and so far could not be reached. If the President agrees, McCormack hopes he will take action and see what can be done with Senate conferees to have them recede and strike out any and all provisions." The President said for me to handle it.

P: That's a nice assignment.

HMJr: What?

P: That's a nice assignment.

HMJr: Yeah. He said that he wanted me to do it, and he wanted to forget about it.

P: What?

HMJr: He wants me to handle it.

P: Yeah. Well, we'll have to do it then.

HMJr: Well, now, what are we going to do? It's this afternoon. I've got a call in for John McCormack. I haven't been able to reach him.

P: Well, do we have to do - do you have to appear this afternoon?

HMJr: I suppose so. I don't know, but you're appearing at one-thirty, aren't you?

P: Yes, and I'll probably be through about two or two-fifteen.

HMJr: Well.....

P: We've stated the reason for our opposition in my statement before the Naval Affairs Committee.

HMJr: Well, I tell you what I think I'm going to do. As soon as I get John McCormack, I'll see what he's got. Then I think I'll call up Bob Patterson and say that the President asked me to handle it and I'm going to handle it my way. See?

P: Yeah.

HMJr: And take full responsibility.

P: Yeah. Well, that's all we've got. We have - we're working on a plan now, which germinates in part from a suggestion George made. Senator - rather somebody made to Senator George, which he sent to me; but we're not satisfied - sufficiently satisfied with it to make it public.

HMJr: Well, it's a lovely time to hand this to me. Well, how can I get you later on if I get.....

P: You can get me through Mr. Grier's office, the clerk of the Ways and Means Committee.

HMJr: But you're not clear in your own mind?

P: Not clear in my own mind about what?

HMJr: How we should kill this.

P: No, I don't see - I haven't got any white rabbit except the one that you suggested.

HMJr: Yeah. That's all right.

P: The only thing I want to - I'd like to put the emphasis on that somewhat in this light, that we think - as I testified before the Naval Affairs Committee - that excess profits tax is the proper method, and we're perfectly open-minded; and if that isn't stiff enough, then we - if that doesn't accomplish the result - then we're for stiffening the tax.

HMJr: Yeah. Well, that's what I said.

P: Yeah.

HMJr: Well, you've got nothing new.

P: No, just this, except that I don't think we have anything new we can spring this afternoon.

HMJr: Well, I'll see. Okay.

P: Of course, you ought to - they're just meeting for the first time this afternoon. If you want me, you can get me. Do you want me to come over to that committee when I get through?

HMJr: Well, I've got - they haven't located John McCormack. Until I've talked to him, I can't tell. See?

P: Yeah. Okay. Well, you can get me through the clerk's office, and you might get a copy of my statement just in case it comes up there.

HMJr: All right.

P: If they ask you about it.

HMJr: Okay.

P: That's the one before the Naval Affairs Committee.

HMJr: Right.

P: Okay.

April 16, 1942
12:40 p.m.

HMJr: Hello.

Operator: Congress McCormack's secretary will try to reach him and have him call, and I told him it was urgent.

HMJr: Yeah. Thank you.

April 16, 1942
1:10 p.m.

HMJr: Hello.

Operator: Congressman McCormack.

HMJr: Thank you. Hello.

Cong. McCormack's Secretary: Mr. Secretary?

HMJr: Yes.

S: Mr. McCormack.

HMJr: Thank you.

Cong. McCormack: Hello, Mr. Secretary.

HMJr: John?

Mc: Yes.

HMJr: God, what a pal you are!

Mc: What's the matter?

HMJr: God, you call up the President on this thing and then he gives me this baby.

Mc: What's that?

HMJr: Six per cent limitation - to kick it out.

Mc: Yeah.

HMJr: And so like all these things, I said, "Sure, I'll take it, Mr. President, if you want it kicked out." Now, what do you want me to do?

Mc: Well, the thought was that that should be taken up in the more - in the regular way and where it could be legislated upon from a sound angle.....

HMJr: Yeah.

Mc: .....instead of in this hit and run way.

HMJr: Well, I'm with you a hundred per cent. Now, John, what's the timing on this?

Mc: Well, here's the story. I want to give you the latest information, and I'm glad I didn't call you - I tried to get you before, but I.....

HMJr: Well, I was up on the Hill testifying.

Mc: I know, but I mean Clarence Cannon just came in and told me that yesterday they had a meeting, the House conferees, and they unanimously agreed to strike it out.

HMJr: Yeah.

Mc: But he said that apparently afterwards the Republicans had a meeting with their leadership, and they came in this morning and changed their minds, see.

HMJr: Yeah.

Mc: So the situation has changed to that extent, and confidentially I think that Clif might go along with them, see.

HMJr: Who?

Mc: Woodrum.

HMJr: Yeah.

Mc: Now, the - Cannon - of course, under those circumstances, nobody can tell what's going to happen, except that Cannon thinks he might still have the votes in the House conferees; but it may have to come back on a separate vote, but the only way it can be adjusted is that the Senate conferees recede it.

HMJr: Well, now, are you meeting with the Senate group?

Mc: No, you see I don't meet with them. The House - the House conferees and the Senate conferees on the bill meet.

HMJr: When are they going to meet?

Mc: Well, they meet this afternoon and tomorrow.

HMJr: Are you going to meet with the Senate group this afternoon?

Mc: They're going to meet - probably meet with us after - they were meeting this morning. Whether they met with the Senate group or not, I don't know; but they're going to - they're probably going to meet with the Senate group this afternoon and tomorrow.

HMJr: Are you a member of it?

Mc: No.

HMJr: Well, how can I get in on it so I can talk to the Democratic leaders?

Mc: Well, the only way you could do anything is if you call up some of those Democratic members of the - some of the Senate Democratic members of the conference committee.

HMJr: Well, that's McKellar, isn't it?

Mc: Barkley is away. I tried to get Barkley yesterday.

HMJr: It's McKellar, isn't it?

Mc: Yes. Of course, the - so far as you talking with the individual members are concerned, it seems to me that the only - the best way to do would be to talk with the - whoever is the acting Senate leader.

HMJr: Well, could I make a suggestion?

Mc: Surely.

HMJr: Is Sam Rayburn in town?

Mc: Yes.

HMJr: Well, now, look. Sam outranks all these other fellows. Couldn't Sam call a little meeting somewhere this afternoon that I could come up, and where I'd be spokesman for the President?

Mc: Well, he couldn't very well with the - he couldn't very well with the Senators, I don't think.

HMJr: Yes, he can.

Mc: Well, I'd rather you'd talk with Sam yourself on that, Mr. Secretary.

HMJr: You would.

Mc: Yes.

HMJr: All right.

Mc: I'd rather you'd talk with.....

HMJr: All right, I'll call him.

Mc: Because it would look better if you were to take that proposition up with him, don't you see.

HMJr: Well, can I say where - that the initiative came from you fellows?

Mc: Yes, oh, yes. You can tell him that - you can tell him how I felt - I sent a message to the President, and it was sent over to you and then how - you can tell him that you talked with me and that I - and he thinks that they're unanimous, but you tell him the latest information I got was about the Republicans. You can leave Clif out, see?

HMJr: All right.

Mc: So you can tell him that.

HMJr: All right.

Mc: All right.

HMJr: Thank you.

Mc: Good-bye.

April 16, 1942
1:15 p.m.

HMJr: Hello.

Operator: The Speaker is presiding. I have Mr. Wright.

HMJr: All right. Hello.

Operator: Go ahead.

HMJr: Hello.

Mr. Wright: Hello, Mr. Secretary.

HMJr: Mr. Wright?

W: Yes, sir.

HMJr: Look, Mr. Wright, the President has asked me to handle for him this six per cent limitation on profits that's on this nineteen billion dollar War Appropriations Bill.

W: Yes, sir.

HMJr: Now, I'd like to, at the Speaker's convenience, talk to him just as soon as I can. Hello.

W: All right. I'll tell you, Mr. Secretary. I'll get in - go on the Floor and ask him when he can see you.

HMJr: Well, I'd like to talk to him on the phone first.

W: Well, he's in the chair now. If he can get out.....

HMJr: No, but I mean whenever - would you simply say to him when he can get out of the chair, will he call me?

W: I surely will. Are you at the office?

HMJr: I'm at the Treasury.

W: All right.

HMJr: And as soon as - at the Speaker's convenience, I'd like to talk to him on the phone.

W: All right, Mr. Secretary. I'll put him on there.

HMJr: Will you get that message to him?

W: I surely will.

HMJr: Thank you.

W: Good-bye.

CONFIDENTIAL

cc - Mr. Sullivan
Mr. Paul

April 16, 1942
2:00 p.m.

HMJr: Hello.

Operator: Go ahead.

HMJr: Hello.

Speaker Rayburn: Yes, Henry.

HMJr: How are you, Sam?

R: I'm all right, except I've got the damndest cold I ever had. I went down home last Friday, a week ago, and got it there and had it all the time I was there, and brought it back with me.

HMJr: Well, I'm sorry.

R: Yeah.

HMJr: Right from the heart of Texas, huh?

R: Sure. (Laughs)

HMJr: What?

R: (Laughs) Right from the heart of Texas.

HMJr: I see. Sam, John McCormack called up the President about this six per cent limitation in this nineteen billion dollar War Department appropriation, you know.

R: Yeah.

HMJr: And the President had Pa Watson call me up and said he wanted me to handle it for him, to get it out.

R: Yeah.

HMJr: Now.....

R: It's coming out.

HMJr: Is it?

R: Yeah, I told Cannon the other day that - to go and drop the whole thing out, the Senate amendment and the House amendment, too. I don't think that's the way to handle a thing like that, do you? I thought.....

HMJr: No, no.

R: I thought, hell, if it's going to be handled by a committee like Ways and Means, the committee that works with him ought to handle it.

HMJr: Well, that's the way the President and I feel.

R: Well, we're going to drop the whole thing out. I told Cannon to drop the whole - both amendments out, and he said they'd do it.

HMJr: Well, now.....

R: It seems that the conferees are pretty well that way on both sides.

HMJr: Well.....

R: I know the House conferees are all that way.

HMJr: Well, John seems worried, because he said within the last half hour, the Republicans, he thinks, are going to vote to keep it in.

R: Well, I hadn't heard a word about that.

HMJr: He said Cannon told him that.

R: Well, I'll be damned! Well, Cannon told me that they had a meeting, and the committee was unanimous - the sub-committee.

HMJr: Well, they evidently have changed.

R: Well, they probably.....

HMJr: Well, could I leave it between you and me and the President like this, that if you need - if you think you need any help from this end of the avenue, give me a ring and I'll come up.

R: Sure, I'll do that, Henry.

HMJr: Now, I haven't talked to McKellar, see.

R: Uh huh.

HMJr: I only talked to McCormack, and he said he'd rather that I'd deal with you direct.

R: Yeah.

HMJr: So will you do a little checking?

R: Yes, I will, Henry.

HMJr: And - because the President pinned this on me, and I don't want to fall down.

R: No, no. Well, we're - I'm for throwing the whole damn thing out.

HMJr: Well, that's what he wants. Now unless - if it's in the bag - I mean that the thing, the whole thing goes out, I won't hear from you.

R: That's right.

HMJr: But according to.....

R: I'll tell Cannon that if he needs any help, that you're ready to come up and put in whatever oar you can.

HMJr: Yes. And - hello.

R: Yes.

HMJr: And just so that you know, I'm leaving town at two-thirty on Friday.

R: Yeah.

HMJr: Over the week-end.

R: I'm leaving - I'll find out before noon tomorrow.

HMJr: Right.

R: Whether Cannon thinks he needs you.

HMJr: Yeah.

R: All right, Henry.

HMJr: Thanks a lot.

cc - Mr. Gamble

April 16, 1942
3:43 p.m.

Richard Jenkins: There's a big mass meeting here in Tucson on Sunday evening, the night before it opens.

HMJr: Yeah.

J: I wonder if you could get me a good speaker here that night, could you?

HMJr: Gosh, I don't know, Dick, but we can find out.

J: Well, now, I tell you. My idea was this, that possibly we could get somebody from Los Angeles.

HMJr: What's the date?

J: It's Sunday night. You see, our campaign starts on the twentieth, and we're having a big mass meeting on Sunday night, the nineteenth.

HMJr: Yeah.

J: And if we could get maybe somebody like Edward G. Robinson to come over on that afternoon plane, or maybe Edward Arnold would do it for us.

HMJr: Well, Ted Gamble is here in charge - Harold Graves is sick.....

J: Yeah.

HMJr: .....and I'll ask him right away.

J: Well, Henry, it would be fine if you could, because I think it would mean a lot to us. We're putting in a lot of work on this thing, and I think that would be an opening gun that would really help us tremendously.

HMJr: Well, I'll do the best I can, Dick.

J: And what I'd like, if you could, whoever tends to it, if they'd wire me in town, I'm staying at the Pioneer Hotel.

HMJr: I've heard of it. They've got a bar, haven't they?

J: They've got a bar, yeah.

HMJr: Yeah. Will you be under it, or back of it, or on top of it?

J: What?

HMJr: Where - what part of the bar will you be?

J: Well, I'm going to - I have a room there, and I'm not going in the bars during this campaign.

HMJr: I see. Well, they'll simply say, "Dick Jenkins, The Bar, Pioneer Hotel."

J: Yeah. That would get me all right. (Laughs)

HMJr: (Laughs)

J: But, Henry, if they would do that, and wire me here, and I'll tell you what we'll do.....

HMJr: Yeah.

J: .....to stand any expenses there is to a trip over here.

HMJr: Yeah.

J: Or from anywhere.

HMJr: Well, I'll get the word to him right away.

J: And we haven't much time. We'd like to break it tomorrow in the papers; if he could work on it right away, it would really help us.

HMJr: Well, you don't give us much time.

J: That isn't much time, is it?

HMJr: No.

J: We just thought of the brilliant idea today. It was brought up here, and it will be sponsored by all the laboring men here in Tucson - the meeting will be.

HMJr: Okay, Dick.

J: It'll be a big thing. We're going to have it at the auditorium at the University, and it would help a lot if we would get a good speaker here.

HMJr: Well, I'll tell Ted Gamble right away.

J: That'll be fine. And, Henry, any communication for me, have them sent just "Dick Jenkins, Chairman of the Defense Savings Committee, Pioneer Hotel."

HMJr: The bar.

J: All right, the bar. (Laughs)

HMJr: Okay.

J: How're you feeling?

HMJr: Okay.

J: Are you really?

HMJr: Yeah.

J: Well, I'll see you around the first of May. I'll be right into your office.

HMJr: All right. Good for you.

J: If you'd work on this, I certainly would appreciate it.

HMJr: All right, Dick.

J: Good-bye.

HMJr: Good-bye.

cc - Mr. Sullivan
Mr. Paul

April 16, 1942
4:20 p.m.

HMJr: Hello.

Operator: Mr. Patterson.

HMJr: Hello.

Robert Patterson: Hello, Henry.

HMJr: Bob?

P: Did you call me?

HMJr: I did.

P: Right.

HMJr: I got a memo from the President around noon today, asking me to see that that six per cent thing is kicked out of the bill and putting it entirely on me, see.

P: Yeah. Well, that's good.

HMJr: That's good says you.

P: Yeah.

HMJr: You're a fine one.

P: I went and harangued them yesterday after I got through with your meeting, and the House committee - the majority of them - were certainly for kicking it out. This is what they said.

HMJr: Yeah.

P: They said it several times.

HMJr: Yeah.

P: They said, "Do you need the money at once?" And I said, "Yes."

HMJr: Yeah.

P: "How soon?" I said, "As soon as we can get it. We counted on it before this."

HMJr: Yeah.

P: And they said, "Well, will this profit limitation which will engender debate, will that - if that delays progress on the appropriations - will that hurt?"

HMJr: Yeah.

P: And I said, "Yes,"it will. We need the money urgently, and a controversial measure like this is bound to be damaging to us to get the money."

HMJr: Yeah.

P: They said, "Shouldn't it be handled in separate legislation, if handled at all?"

HMJr: Yeah.

P: And I said, "Yes, I think so." Now, that was the temper of the House conference, the House side of the conference.

HMJr: Well, I got that report from John McCormack, and then something happened at noon. The Republicans evidently decided that they'd make an issue of it.

P: Did they?

HMJr: But here's the point. I got hold of the Speaker, and the Speaker promised me personally that he could handle it and if he couldn't, he'd let me know between now and noon tomorrow.

P: I think the tougher place, Henry, is in the Senate.

HMJr: I know, but.....

P: McKellar still wants to have something in there.

HMJr: But Barkley's not in town, and I didn't want to go to McKellar.

P: Yeah.

HMJr: And the Speaker ranks all of them, you see.

P: Yes.

HMJr: So I wanted to let you know; and if I have to move, I'll let you know what I'm going to do, and I'll most likely ask you to go up there with me, see.

P: Yeah. They told me today that they're in conference, and I was told to stand by ready to go up to the Capitol before the full conference. We were only before the House end of the conference.

HMJr: Well, in view of the President's directive, would you mind keeping me posted?

P: I'll keep you posted, you bet.

HMJr: Now, I didn't call the other people in the room because - who were here yesterday - because I thought that you were being the most active in it, and it being your appropriation.

P: Yeah.

HMJr: But.....

P: That's all right. I'll keep you posted.

HMJr: And I'll do the same by you.

P: You bet.

HMJr: I thank you.

P: Thank you, Henry.

April 16, 1942
4:45 p.m.

FINANCING

Present: Mr. Hadley
Mr. Baker
Mr. Murphy
Mr. Buffington
Mr. Haas
Mr. Bell
Mrs. Klotz

H.M.JR: That looks better, that chart, doesn't it?

MR. HAAS: Yes.

H.M.JR: You are keeping these sheets that you make?

MR. HAAS: Yes, we will keep a file of them.

H.M.JR: In case I want to get the movements, you see.

MR. HAAS: That table shows the exact differences in prices, you see.

H.M.JR: All right, Bell.

MR. BELL: Well, this is the way we feel about it.

H.M.JR: You have got them all prepared, have you?

MR. BELL: Yes. If they don't agree with it, they will have to speak up.

(Mrs. Klotz entered the conference.)

H.M.JR: Imagine, they come in here and say,"This is the way we feel about it."

MRS. KLOTZ: That sounds like Dan Bell.

MR. BELL: Mrs. Klotz, I am surprised at you. We feel that the eight hundred seventy-five million dollar Home Owners' Loan bonds should be called on April 29 or thereabouts, and that the early part of May, around the week of May 4, we should raise two billion dollars in cash. At that time we should consider a short bond and a long bond, probably in the two-and-a-half-percent area. Immediately following that we should consider the matter of putting out fifty million dollars additional bills each week but not put out any bills until we do the cash financing.

H.M.JR: Why?

MR. BELL: Well, we think it will raise the rates in the short end in May because of price increases in the long bonds like the certificate. We think we ought to hit that long market before we put out any short securities.

Now, you fellows can speak up if I am not expressing your views.

Later in the month of May, say the week of the eighteenth or twentieth, we would refund the eight hundred seventy-five million called bonds, the RFC, and the September notes, and get them out of the way, because it seems to us that we have got to go to the market more than once a month some place along the line in order to do this refunding job, either in September or in July for the RFC and the notes, and we might as well go do it all at once and get them out of the way, and then nothing will bother us until October when we have another RFC note issue.

H.M.JR: We will look--

MR. BELL: That takes us down to the immediate financing problem.

H.M.JR: Who wants to give the sales talk why we should call the Home Owners' Loan?

MR. BELL: I am perfectly willing to let anybody talk.

MR. MURPHY: Can I do it myself?

H.M.JR: Sure, if you don't use more than half-dollar words.

MR. MURPHY: I think I can stand that much. In the first place, it seems to me that it would be giving the market a sign of weakness if we did not call them. The bonds have only a two-year call period, which means that they are two-year securities, and they have a two-and-a-quarter coupon. We can do better than two and a quarter for two years, and if we don't take advantage of it, it will look to the market as if we don't think the market is as good as they think it is. In the second place, there is the purely fiscal reason that we can save money by calling it. We can borrow at a cheaper rate for that period and we will save money for ourselves and for HOLC. Therefore, I think that HOLC would be very glad to have us do the deal. In the next place, we will accelerate the run-off of tax-exempt bonds. We will be replacing eight hundred million dollars of tax-exempt bonds with eight hundred million of taxable bonds, and we will be bringing more banks and more institutions to the point, from a tax-exempt to a taxable status, and will be increasing our revenue and we will be increasing the strength of our position relative to state and local governments on the tax-exempt question. In the final place, I think we will make the market happier than if we don't do it, because the bonds are selling on the rights basis and the people would like to get a bit of gravy which we can give them with a benefit rather than a cost to ourselves. It seems to me that when we say rather emphatically that the certificates would not have exchange provisions, that we had some negative indication that the other securities with respect to which we have not made the negative statement would, and it seems to me that it would promote a general good feeling to cut them in on a little bit of gravy. (Laughter)

H.M.JR: I am surprised. The best argument is to get rid of the tax-exempts. When did you think that one up?

MR. MURPHY: I have been working on this for two days.

MR. HAAS: Put the rights at the end this time.

MR. BELL: A dealer asked me today if you weren't committed to call them in view of your statement before the Ways and Means Committee last year about getting the tax-exempts out of the way - that you would get all tax-exempts out of the way as soon as the call periods came around, and I said no, I didn't think you were committed, but he asked the question. You said we would get rid of tax-exempt securities as the call periods came along, but I don't think that was any commitment.

H.M.JR: Well, is anybody together on this thing?

MR. BELL: I think we are.

H.M.JR: Well, I will let it sink in and we will hit it again tomorrow morning.

MR. BELL: You don't have to make the decision today. We have got two or three more weeks.

H.M.JR: What is Mills' first name?

MR. BELL: Abbott.

H.M.JR: Class is excused except for Mr. Bell.

MR. BELL: Well, we are not through with this.

H.M.JR: Well, what else is there?

MR. BELL: You wanted to discuss tap issues.

H.M.JR: Oh, not tonight.

MR. BELL: O.K.

MRS. KLOTZ: That is too funny for words. (Laughter)

MR. BELL: You have got to have a clear head for that.

H.M.JR: Ten o'clock, Mrs. Klotz. Does that interfere with anything?

MR. BELL: I don't know what I have got. It doesn't make any difference.

MRS. KLOTZ: We can shift it.

H.M.JR: I have got an eleven o'clock appointment that I have got to keep.

MR. BELL: It is all right. I will fix it. I don't know what I have got. O.K., we will do this other tomorrow then. This other won't take so long.

H.M.JR: You just said - you didn't say anything about tap issues. Tap dance but no tap issues.

MR. BELL: You asked me to explain this morning the first thing about tap issues.

H.M.JR: That was this morning.

MR. BELL: You said when we came in. This is a postponement of this morning. (Laughter)

H.M.JR: No, I will be fresh at ten tomorrow.

MR. BELL: And at the same time F and G, increase the limitation.

H.M.JR: I am allowing you an hour tomorrow morning.

MR. BELL: We won't need that, but we will take it.

MRS. KLOTZ: You had better take it.

MR. BELL: And also George Buffington's Capital Issues Committee, I would like to discuss that a minute.

H.M.JR: You can do that tomorrow because I will not see Mr. Purcell.

MR. BELL: I mean tomorrow morning we will do that while we are here for just a moment.

H.M.JR: You can have ten to eleven.

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE April 16, 1942.

TO Secretary Morgenthau

FROM George Buffington GAB-

RE: CAPITAL ISSUES COMMITTEE

As I told you yesterday morning, I talked with Ganson Purcell, Chairman of the Securities and Exchange Commission, on Saturday of last week about this subject. He told me he wanted to give the matter further study before coming to any final decision but he agreed that there probably was not sufficient reason at this time to justify setting up an extensive organization to control public offerings of securities. It was pointed out to him that the present machinery for priorities and allocations appears to offer adequate control of capital expenditures. Mr. Purcell agreed it might be well to request that corporations give ninety days advance notice to the Securities and Exchange Commission about financing.

Mr. Purcell's office telephoned this morning and asked if I would arrange an appointment with you for him tomorrow, Friday, April 17. I telephoned him to see if there had been any new developments since my talk last Saturday. He stated that he had some definite ideas on the subject he would like to clear with you, if possible tomorrow, and I told him I would try to make an appointment.

Stephens tell Buffington it would have to be next week

Buffington & Purcell saw Secy 4/22/42

THE NATIONAL COMMITTEE OF THE SECURITIES INDUSTRY FOR WAR FINANCING

33 SOUTH CLARK STREET
CHICAGO

JAMES F. BURNS, Jr.
President, Association of Stock Exchange Firms

H. H. DEWAR
Chairman, National Association of Securities Dealers, Inc.

JOHN S. FLEEK
President, Investment Bankers Association of America

EMIL SCHRAM
President, New York Stock Exchange

Washington Office
821 Fifteenth Street, N. W.
Washington, D. C.

April 16, 1942

TO MEMBER FIRMS OF THE SECURITIES INDUSTRY:

A month ago it was evident that a National Committee of the Securities Industry should be established in order to co-ordinate and direct our national effort to aid the government in financing the war. On March 31 the necessity for this was clearly demonstrated when the Secretary of the Treasury called upon the undersigned to organize the industry for the specific job of soliciting 10,000 corporations for the purchase of the Treasury Certificates of Indebtedness to be offered April 6th.

This Committee was that day set in motion and a nationwide coverage was hastily improvised. The results have been most gratifying to the Committee and to the Treasury, the latter realizing full well the shortness of time allowed for the task. The list of corporations was thoroughly covered by direct solicitation and your immediate effective response has given impressive proof of the usefulness to the nation of the training and experience in this business.

You will be interested in a brief review of the steps already taken by the industry to assist the government in its war financing. Last December the ASEF, IBA, NASD, and NYSE, as representatives of the industry, offered their services to the Treasury. In January the heads of these organizations were called to Washington for a four-day conference, as a result of which committees representing the industry were formed in each state to work with their respective State Administrators of the Defense Savings Staff of the Treasury Department, and to mobilize the energies of the securities firms in their states for active duty when called. In some states local committees had previously been set up and were already hard at work. All these state committees have endeavored to co-operate with their State Administrators and, in many cases, have been able to accomplish much in the sale of Defense Bonds. In February the Treasury Department appointed T. J. Bryce, a partner of Clark, Dodge & Co., New York City, as Securities Industry Liaison Officer of the Defense Savings Staff. He is serving on a full-time basis as a volunteer and is co-operating closely with the undersigned and with all our state committees in giving advice and developing plans for our contribution to the national effort.

In establishing this National Committee, the undersigned are acting to promote unification and co-ordination of the industry's activities and, most especially, as demonstrated during the past week, to have a nationwide organization ready at a moment's notice for specific assignments when and if called upon by the Treasury. In the interest of economy and efficiency, we have established an office at 33 South Clark Street, Chicago, from which central point all general and routine communications and memoranda containing recommendations and detailed instructions will be mailed.

Several procedural plans are now in preparation and should be in the hands of the state committees later in the month. Furthermore, we shall appreciate receiving from you any information or suggestions based on your own experience in your own localities. You should direct such communications either to the Chicago or Washington office of the Committee or directly to any member of the Committee.

Each of the undersigned wishes to thank you for your participation in this patriotic undertaking. We bespeak your co-operation and assistance in working with this National Committee in its endeavor to co-ordinate and direct the united energies of the securities industry.

Sincerely yours,

THE NATIONAL COMMITTEE OF THE SECURITIES INDUSTRY FOR WAR FINANCING

JAMES F. BURNS, JR.
H. H. DEWAR
JOHN S. FLEEK
EMIL SCHRAM

UNITED STATES DEFENSE BONDS

SERIES E·F·G·

The Safest Investment in the World

Application for

UNITED STATES DEFENSE SAVINGS BONDS

The undersigned hereby applies for United States Defense Savings Bonds as follows:

Series E

Number	*Maturity value*	*Issue price*	*Amount*
____	$25.00	$18.75	$ ____
____	$50.00	$37.50	$ ____
____	$100.00	$75.00	$ ____
____	$500.00	$375.00	$ ____
____	$1,000.00	$750.00	$ ____

Series F

Number	*Maturity value*	*Issue price*	*Amount*
____	$25.00	$18.50	$ ____
____	$100.00	$74.00	$ ____
____	$500.00	$370.00	$ ____
____	$1,000.00	$740.00	$ ____
____	$5,000.00	$3,700.00	$ ____
____	$10,000.00	$7,400.00	$ ____

Series G

Number	*Maturity value*	*Issue price*	*Amount*
____	$100.00	$100.00	$ ____
____	$500.00	$500.00	$ ____
____	$1,000.00	$1,000.00	$ ____
____	$5,000.00	$5,000.00	$ ____
____	$10,000.00	$10,000.00	$ ____

Total remittance.. $ ____

REGISTER BONDS IN THE NAME OF: (Please print all names)

NAME {Mr. / Mrs. / Miss} ________ FIRST NAME ________ MIDDLE NAME OR INITIAL ________ LAST NAME

ADDRESS ________ STREET

________ CITY ________ STATE

If you wish to name a Co-owner or Beneficiary, please give name and address below of Co-owner or Beneficiary and check which: ☐ Co-owner ☐ Beneficiary

Name of Co-owner or Beneficiary {Mr. / Mrs. / Miss} ________ FIRST NAME ________ MIDDLE NAME OR INITIAL ________ LAST NAME

ADDRESS ________ STREET

________ CITY ________ STATE

PAYMENT:

Attached herewith is {Check / Money order} to the Treasurer of the United States

*Charge to my account with ________ NAME OF CONCERN

SHIPMENT:

To subscriber at ________ STREET

________ CITY ________ STATE

SHIPMENT TO BE MADE BY:

Direct mail by the Treasurer of the United States or Fiscal Agent of the United States to:

*For account of Subscriber to: ________ NAME OF CONCERN

And by above named concern {To subscriber at above address / To be held for account of subscriber*}

SIGNATURE OF PURCHASER ________ FIRST NAME ________ MIDDLE NAME OR INITIAL ________ LAST NAME

DATE ________

Receipt is hereby acknowledged of funds as designated above:

________ NAME OF REPRESENTATIVE

Representing ________ NAME OF CONCERN

________ ADDRESS

* *Transactions of this type, made for the convenience of the subscriber, are entirely at his risk.*

★ Series G ★

TYPE OF BOND

Twelve-Year Current Income Bond Issued at Par • *Registered* • *Not Transferable.*

Denominations: $100, $500, $1,000, $5,000, and $10,000.

Dated first of month in which remittance is received by any Federal Reserve Bank or the Treasurer of the United States.

Matures 12 years from issue of date of bonds.

INTEREST RATE

2.5 percent a year. Interest is paid semiannually by Treasury check. As this rate is fixed for a 12-year period, if bond is redeemed before maturity a partial refund of interest paid is required. (See "Redemption" below.)

PRICE AND MATURITY

This bond is priced at par. It is payable at par if it is held by the owner for 12 years from issue date.

LIMITATION ON HOLDINGS

Owner is limited to $50,000 (cost price) of Series G bonds, or to $50,000 (cost price) of Series G and Series F combined, issued in each calendar year. All limitations on Series G bonds and Series F bonds are in addition to the annual limitation of $5,000 (maturity value) of Series E bonds.

REGISTRATION

Bonds can be registered in the same manner as Series F bonds. (See data on Series F bonds in this folder.)

REDEMPTION

Bonds are payable at face value 12 years from issue date, and may not be called by the United States for redemption before maturity. At option of owner, bonds may be redeemed in whole or in part, before maturity, after 6 months from issue date, at fixed redemption values (which are less than the face amount of the bond), on the first day of any month, on at least one month's notice. Table of redemption values appears on face of bond. Table of selected redemption dates is on reverse side of this folder.

As the interest rate of 2.5 percent is fixed for a 12-year period, if bond is redeemed in whole or in part before maturity, an adjustment of interest, on the amount redeemed, to a lower rate for the shorter period is required, and is accomplished through partial refund of prior interest paid, the amount being deducted from the principal amount redeemed. In every case, however, the total return of redemption value plus the interest previously received exceeds the invested principal. In the case of partial redemption, no interest will be lost by the owner on the unredeemed portion of the bond which will be reissued with original issue date.

Series G bonds may be redeemed before maturity, at par without adjustment of prior interest paid, upon death of owner (or co-owner), or, if held by a fiduciary, upon the termination of the trust through death of any person, but notice of such intent must be received by a Federal Reserve Bank or by the Treasury Department within 4 months of death.

WHERE TO BUY (OR ORDER)

At Federal Reserve Banks.

Through banks and other designated sales agencies.

Direct by mail from the Treasurer of the United States, or from any Federal Reserve Bank.

• General Information •

RESIDENTIAL AND GEOGRAPHIC LIMITATIONS ON REGISTRY AND DELIVERY

Restricted to residents of the United States, its Territories and Insular Possessions, the Canal Zone, the Philippine Islands, or citizens of the United States temporarily residing abroad. No deliveries of Defense Savings Bonds will be made abroad. Defense Savings Bonds purchased by citizens temporarily residing abroad will be delivered in the United States or held in safekeeping as the purchaser may [illegible]. Bonds are nontransferable.

FORM OF NAME(S) IN REGISTRATION

Individuals Series E, F, and G: Only one or two persons can be registered as the owners of these series of Defense Savings Bonds. One given name and one initial, if any, are to be used as well as the last name. The name(s) may be preceded by any applicable title, such as Dr., Rev., etc. Married women should use their given name, example: Mrs. Mary A. Jones *not* Mrs. Frank B. Jones. Bonds are not to be registered in the name of a person under disability for reasons other than minority, unless a legal representative of his estate has been appointed. This is to be indicated on the registration by the appropriate words, for example, "Henry Jones, an incompetent under legal guardianship." Registration in the name of natural or voluntary guardians is not authorized.

(IMPORTANT: *The above forms of registration are the only ones authorized for Defense Savings Bonds, Series E.*)

Associations, Partnerships, Trustees, or Corporations Series F and G:

(1) A private corporation, followed by the words "a corporation"; for example "Smith Manufacturing Company, a corporation."

(2) An unincorporated association, such as a lodge, church, society, or similar body, followed by the words "an unincorporated association"; for example, "The Lotus Club, an unincorporated association." The term "an unincorporated association" is not to be used to describe a trust fund, a partnership, or a trade name.

(3) A partnership, considered as an entity, followed by the words "a partnership"; for example, "Smith and Brown, a partnership."

(4) A fiduciary (trustee, guardian, etc.), for forms of registration consult Treasury Dept. Circular No. 530, current revision.

(5) States, counties, municipal corporations and the custodians or owners of public funds. For forms of registration consult Treasury Dept. Circular No. 530, current revision.

The full legal name of the corporation, unincorporated association, or partnership, as the case may be, is to be given in the registration. No officer or member of the organization may be named in the registration. The form of registration used must express the actual ownership of, and interest in, the bond.

A MINOR CHILD

A Defense Savings Bond may be registered in the name of a minor child, and, if purchased with funds already belonging to the minor, a co-owner or beneficiary may not be included, but the bond will be registered in his (or her) name alone. If there is a legal guardian appointed and acting, then the name should be followed by the words "a minor under legal guardianship." If the bond represents a gift from some other person, or is purchased with funds not already belonging to the minor, a co-owner or beneficiary may be named with the minor child. A minor of sufficient competency and understanding who has no legal guardian may cash his (or her) own bond or any bond of which he (or she) is a co-owner. If the Department is on notice of legal guardianship, payment during minority will be made only to the guardian, proof of whose appointment will be required.

TWO INDIVIDUALS AS CO-OWNERS

At the time of purchase, you may name one individual as co-owner with you by inserting his or her name and address on the proper lines on the order form, and by checking, as indicated, the word "co-owner." In such cases, the only authorized conjunction used in the joining of the two names registered is "or." For example, John A. Jones or Mrs. Mary L. Jones; *not* John A. Jones *and* Mrs. Mary L. Jones; *nor* John A. Jones *and/or* Mrs. Mary L. Jones. Either co-owner may redeem the bond without the signature of the other, including the survivor in case of the death of one co-owner. Co-owners may redeem their bonds jointly, in which case the redemption check will be issued to them jointly. A bond will not be reissued in order to add the name of a co-owner, but will be reissued on the death of one co-owner in the name of the other with or without a beneficiary. In the case of the death of the owner of a bond which has no co-owner or beneficiary registered, the bond is payable to the owner's estate.

TWO INDIVIDUALS (One Owner and One Beneficiary)

You may name one individual as beneficiary on your bonds by inserting his or her name and address on the proper lines on the order form, and by checking, as indicated, the word "beneficiary." The beneficiary may redeem the bonds only if he or she survives the owner. Bonds so registered may not be reissued while both the owner and beneficiary are living, but may be reissued if the beneficiary predeceases the owner. The named owner may, at any time, redeem the bond without the permission of the beneficiary.

(In case of any doubt, *Treasury Dept. Circular No. 530*, current revision, should be consulted. A bond is not authorized to be issued, without consultation with the Treasury Department, if there is any doubt of the legality of issuance or form of registration.)

Tables of Redemption Values at Selected Dates, for Defense Savings Bonds, Series E, F, and G

SERIES E

Period after issue date	Redemption value at end of period			Approximate investment yield on purchase price from issue date to end of period
				Percent
Issue Price	$18.75	$37.50	$75.00	
1 year	18.87	37.75	75.50	0.67
2 years	19.12	38.25	76.50	.99
[illegible] years	19.50	39.00	78.00	1.31
[illegible] years	20.50	41.00	82.00	1.79
[illegible] years	22.00	44.00	88.00	2.30
Maturity value (10 years from issue date)	25.00	50.00	100.00	2.90

SERIES F

Period after issue date	Redemption value at end of period			Approximate investment yield on purchase price from issue date to end of period
				Percent
Issue Price	$18.50	$74.00	$740	
1 year	18.55	74.20	742	0.27
[illegible] years	19.00	76.00	760	.99
[illegible] years	19.92	79.70	797	1.49
[illegible] years	21.20	84.80	848	1.96
10 years	23.22	92.90	929	2.29
Maturity value (12 years from issue date)	25.00	100.00	1,000	2.53

SERIES G

Period after issue date	Redemption value at end of period			Approximate investment yield on purchase price from issue date to end of period
				Percent
Issue Price	$100.00	$1,000	$10,000	
1 year	97.80	978	9,780	0.30
2 years	95.10	951	9,510	.88
[illegible] years	94.90	949	9,490	1.51
[illegible] years	96.10	961	9,610	1.96
10 years	97.90	979	9,790	2.31
Maturity value (12 years from issue date)	100.00	1,000	10,000	2.50

U. S. GOVERNMENT PRINTING OFFICE: 1942 [illegible]

Application for
UNITED STATES DEFENSE SAVINGS BONDS

The undersigned hereby applies for United States Defense Savings Bonds as follows:

Series E

Number	Maturity value	Issue price	Amount
____	$25.00	$18.75	$ ____
____	$50.00	$37.50	$ ____
____	$100.00	$75.00	$ ____
____	$500.00	$375.00	$ ____
____	$1,000.00	$750.00	$ ____

Series F

Number	Maturity value	Issue price	Amount
____	$25.00	$18.50	$ ____
____	$100.00	$74.00	$ ____
____	$500.00	$370.00	$ ____
____	$1,000.00	$740.00	$ ____
____	$5,000.00	$3,700.00	$ ____
____	$10,000.00	$7,400.00	$ ____

Series G

Number	Maturity value	Issue price	Amount
____	$100.00	$100.00	$ ____
____	$500.00	$500.00	$ ____
____	$1,000.00	$1,000.00	$ ____
____	$5,000.00	$5,000.00	$ ____
____	$10,000.00	$10,000.00	$ ____

Total remittance .... $ ____

REGISTER BONDS IN THE NAME OF: (Please print all names)

NAME {Mr. / Mrs. / Miss} ____________________
FIRST NAME MIDDLE NAME OR INITIAL LAST NAME

ADDRESS ____________________
STREET
____
CITY STATE

If you wish to name a Co-owner or Beneficiary, please give name and address below of Co-owner or Beneficiary and check which: ☐ Co-owner ☐ Beneficiary

Name of Co-owner or Beneficiary {Mr. / Mrs. / Miss} ____________________
FIRST NAME MIDDLE NAME OR INITIAL LAST NAME

ADDRESS ____________________
STREET
____
CITY STATE

PAYMENT:

Attached herewith is {Check / Money order} to the Treasurer of the United States

*Charge to my account with ____________________
NAME OF CONCERN

SHIPMENT:
To subscriber at ____________________
STREET
____
CITY STATE

SHIPMENT TO BE MADE BY:
Direct mail by the Treasurer of the United States or Fiscal Agent of the United States to:
*For account of Subscriber to: ____________________
NAME OF CONCERN

And by above named concern {To subscriber at above address / To be held for account of subscriber*}

SIGNATURE OF PURCHASER ____________________
FIRST NAME MIDDLE NAME OR INITIAL LAST NAME

DATE ____________________

Receipt is hereby acknowledged of funds as designated above:

____
NAME OF REPRESENTATIVE

Representing ____________________
NAME OF CONCERN

____
ADDRESS

* *Transactions of this type, made for the convenience of the subscriber, are entirely at his risk.*

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE April 16, 1942

TO Secretary Morgenthau

FROM Mr. Haas

Subject: Recent Changes in Government Bond Prices

The accompanying chart and table compare the yields of Treasury bonds and notes at last night's close (April 15) with those on March 19.

It will be noted that since that date the yields of all bonds but one have fallen (prices risen), while the yields of all notes have risen (prices fallen).

The rise in bond prices has extended over the entire period under consideration with only minor setbacks. Note prices reached a high for the period on March 25, but have declined slowly ever since. The average rate at issuance of Treasury bills has increased from .20 percent on March 18 to .28 percent on April 15. This strength in long-term and weakness in short-term securities was presumptively caused by the Treasury's decision to issue certificates of indebtedness, rather than long securities, this month.

The focus of strength in the market for taxable issues has been the 2-1/2's of 1952-54, the yield of which has declined by 7 basis points during the period. Of the tax-exempt securities, the 3-1/8's of 1946-49 and the 4's of 1944-54 have shown the greatest strength, the yield of each of these issues also declining by 7 basis points.

During the early part of the period under review, the Federal Open Market Account sold $5.8 millions of Treasury bonds, of which $4.8 millions were tax exempt, and $1.0 million were taxable. On April 8, it purchased $0.8 million of 2-1/2's of 1967-72. On April 13, the Account purchased $11.8 millions of Treasury bills, of which $2.0 millions were sold on the following day.

Price and Yield Changes of United States Securities
March 19, 1942 to April 15, 1942

Security	Prices: March 19, 1942	Prices: April 15, 1942	Prices: Change	Yields: March 19, 1942	Yields: April 15, 1942	Yields: Change
	(Decimals are thirty-seconds)			(Percent)		
Bills						
Average rate last issue	-	-	-	.20	.28	+.08
Certificates						
1/2% 11/1/42	-	100.01	-	-	.45	-
Taxable Notes						
3/4% 3/15/43	100.12	100.08	-.04	.37	.48	+.11
3/4 9/15/44	99.31	99.26	-.05	.76	.83	+.07
3/4 12/15/45	99.21	99.16	-.05	.84	.89	+.05
1 3/15/46	99.29	99.27	-.02	1.02	1.04	+.02
Taxable Bonds						
2% 3/15/48-50	101.28	102.00	+.04	1.67	1.64	-.03
2 6/15/49-51	101.04	101.11	+.07	1.83	1.80	-.03
2 12/15/51-55	100.12	100.22	+.10	1.96	1.92	-.04
2-1/2 3/15/52-54	103.23	104.08	+.17	2.09	2.02	-.07
2-1/4 6/15/52-55	101.06	101.20	+.14	2.12	2.07	-.05
2-1/2 3/15/56-58	103.05	103.14	+.09	2.24	2.21	-.03
2-1/2 9/15/67-72	100.27	101.08	+.13	2.46	2.43	-.03
Wholly Tax-exempt Notes						
2% 9/15/42	101.04	100.31	-.05	5/32*	5/32*	0/32*
1-3/4 12/15/42	101.11	101.06	-.05	2/32*	1/32*	-1/32*
1-1/8 6/15/43	101.04	100.31	-.05	.22	.29	+.07
1 9/15/43	101.03	100.30	-.05	.26	.33	+.07
1-1/8 12/15/43	101.16	101.09	-.07	.26	.35	+.09
1 3/15/44	101.10	101.06	-.04	.34	.38	+.04
3/4 6/15/44	100.27	100.23	-.04	.37	.42	+.05
1 9/15/44	101.16	101.12	-.04	.39	.43	+.04
3/4 3/15/45	101.00	100.29	-.03	.41	.44	+.03
Partially Tax-exempt Bonds						
3-3/8% 6/15/43-47	103.21	103.13	-.08	.41	.44	+.03
3-1/4 10/15/43-45	104.06	104.01	-.05	.57	.54	-.03
3-1/4 4/15/44-46	105.06	105.01	-.05	.72	.71	-.01
4 12/15/44-54	108.11	108.10	-.01	.91	.84	-.07
2-3/4 9/15/45-47	106.06	106.05	-.01	.94	.91	-.03
2-1/2 12/15/45	105.28	105.26	-.02	.90	.88	-.02
3-3/4 3/15/46-56	110.08	110.06	-.02	1.11	1.08	-.03
3 6/15/46-48	107.28	108.00	+.04	1.09	1.03	-.06
3-1/8 6/15/46-49	108.08	108.12	+.04	1.13	1.06	-.07
4-1/4 10/15/47-52	115.20	115.20	.00	1.33	1.30	-.03
2 12/15/47	104.23	104.31	+.08	1.15	1.09	-.06
2-3/4 3/15/48-51	107.28	107.31	+.03	1.38	1.34	-.04
2-1/2 9/15/48	107.07	107.10	+.03	1.33	1.31	-.02
2 12/15/48-50	104.21	104.28	+.07	1.28	1.24	-.04
3-1/8 12/15/49-52	110.22	110.28	+.06	1.65	1.61	-.04
2-1/2 12/15/49-53	106.16	106.20	+.04	1.60	1.58	-.02
2-1/2 9/15/50-52	106.20	106.26	+.06	1.66	1.63	-.03
2-3/4 6/15/51-54	108.18	108.24	+.06	1.74	1.71	-.03
3 9/15/51-55	110.20	110.23	+.03	1.78	1.76	-.02
2-1/4 12/15/51-53	104.29	105.06	+.09	1.70	1.67	-.03
2 6/15/53-55	103.10	103.22	+.12	1.68	1.64	-.04
2-1/4 6/15/54-56	104.28	105.07	+.11	1.80	1.77	-.03
2-7/8 3/15/55-60	110.00	110.14	+.14	2.00	1.96	-.04
2-3/4 9/15/56-59	109.10	109.22	+.12	2.11	2.07	-.04
2-3/4 6/15/58-63	109.12	109.26	+.14	2.07	2.03	-.04
2-3/4 12/15/60-65	110.00	110.14	+.14	2.10	2.07	-.03

Treasury Department, Division of Research and Statistics. April 15, 1942.

* Excess of price over zero yield.

EXECUTIVE ORDER

- - - - - - - -

ESTABLISHING THE INTERDEPARTMENTAL COMMITTEE FOR THE VOLUNTARY PAY ROLL SAVINGS PLAN FOR THE PURCHASE OF WAR SAVINGS BONDS

WHEREAS it daily becomes more apparent that victory will require the fullest participation of all of the people in our war effort, and that the purchase of War Savings Bonds constitutes a direct and effective participation; and

WHEREAS every purchaser of War Savings Bonds invests not only in the success of the Nation's common cause, but also in his own personal security and independence; and it is, therefore, to the manifest advantage of both the Government and every citizen that the sale of War Savings Bonds should be facilitated; and

WHEREAS employers and employees in many business and industrial enterprises, as well as some Governmental activities, have developed, and are maintaining, with notable success, programs that provide for the purchase of War Savings Bonds through regular, voluntary pay allotments; and it is proper that all civilian employees and officers in the executive branch of the Government should be afforded equal opportunity for voluntary participation in such systematic purchase programs:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and the Statutes of the United States as President of the United States, it is hereby ordered as follows:

1. There is hereby established the Interdepartmental Committee for the Voluntary Pay Roll Savings Plan for the Purchase of War Savings Bonds (hereinafter referred to as the Committee). The Committee shall consist of Rear Admiral Charles Conard, Supply Corps, United States Navy, Retired, who shall serve as Chairman, and the head of each of the several departments, establishments, and agencies in the executive branch of the Government. Each member of the Committee, other than the Chairman, may designate an alternate from among the officials of his department, establishment, or agency, and such alternate may act for such member in all matters relating to the Committee.

2. The Committee shall perform the following functions and duties:

42

a. Formulate and present to the several departments, establishments, and agencies in the executive branch of the Government a uniform plan whereby all civilian officers and employees may systematically purchase War Savings Bonds through voluntary pay allotments.

b. Assist the several departments, establishments, and agencies in the adoption of said voluntary pay allotment plan and in the solution of any special problems that may develop in connection therewith.

c. Act as a clearing house for the several departments, establishments, and agencies in the dissemination of such statistics and information relative to the execution of the plan as may be deemed advantageous.

d. Recommend to the several departments, establishments, and agencies any improvements in the program adopted pursuant to said plan.

3. Each of the departments, establishments, and agencies in the executive branch of the Government shall institute and set in operation, as soon as may be, the plan recommended by the Committee, with such

modifications as particular circumstances may render advisable. Each Committee member shall act as liaison officer between the Committee and his department, establishment, or agency with regard to said plan.

Franklin D Roosevelt

THE WHITE HOUSE,

April 16, 1942.

April 16, 1942

TO: Mr. Gamble

FROM: The Secretary

Mr. Tickton will furnish you with a list of 19 corporations, employing 5,000 or more people, which do not have the payroll deduction plan. dated & filed 4/15

I wish in each case you would send a telegram to our State Administrator and find out why each particular firm has not got the payroll deduction plan and the Administrator should use his best efforts to get them to put in one immediately. dated & filed 4/20

Please keep Mr. Tickton informed.

April 16, 1942

TO: Mr. Gamble

FROM: The Secretary

Mr. Tickton has given me a list of 115 companies who have $2,000,000 or more in war contracts who do not have the payroll deduction plan. dated & filed 4/15

I wish you would take this up with our State Administrators, by telegram, and find out why they don't - and have them take immediate steps to see that payroll deduction plans are put into these companies. dated filed 4/20

Please keep Mr. Tickton informed.

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE April 20, 1942.

TO Mrs. MacHugh

FROM Mr. Gamble's Office EW

There is attached a copy of the form of telegram sent to State Administrators today, in compliance with the two memos sent to Mr. Gamble by the Secretary regarding firms not reported as having installed Payroll Savings Plans.

As soon as answers from these telegrams are received, Mr. Tickton will be furnished the information.

Attachment.

Copy in diary - 4/20/42

Mr. C. E. Wilson
Pres of General Motors.
Detroit

I have reviewed your plan to assist employees in their purchases of war bonds. The spirit and enthusiasm of General Motors employees during the drive for victory in our survival war is most encouraging. I am sure that the employees want to hold an investment in our war effort and I have confidence that your goal of 100 per cent employee participation each month throughout the war will be attained.

your members

HMJr.

OFFICIAL

APRIL 16, 1942

MR. C. E. WILSON
PRESIDENT, GENERAL MOTORS
DETROIT, MICHIGAN

I HAVE REVIEWED YOUR PLAN TO ASSIST EMPLOYEES IN THEIR PURCHASES OF WAR BONDS. THE SPIRIT AND ENTHUSIASM OF GENERAL MOTORS EMPLOYEES DURING THE DRIVE FOR VICTORY IN OUR SURVIVAL WAR IS MOST ENCOURAGING. I AM SURE THAT THE EMPLOYEES WANT TO HOLD AN INVESTMENT IN OUR WAR EFFORT AND I HAVE CONFIDENCE THAT YOUR GOAL OF 100 PERCENT EMPLOYEE PARTICIPATION EACH MONTH THROUGHOUT THE WAR WILL BE ATTAINED

HENRY MORGENTHAU JR.

Nav
6 400

WAS DET 205

HENRY MORGENTHAU JR

PHONED
TO Fitzgerald
TIME 105
BY RR
COPY ___ MDS ___

APR 16 1942
49

SECRETARY OF THE TREASURY

I APPRECIATE VERY MUCH THE TELEGRAM YOU SENT ME TODAY REGARDING THE GENERAL MOTORS EMPLOYES BOND DRIVE FOR VICTORY. I READ IT TO THE EMPLOYES HERE IN THE GENERAL MOTORS BUILDING AS PART OF THE PROGRAM TODAY. EARLY REPORTS I HAVE RECEIVED FROM THE PLANTS INDICATE THAT THE DRIVE IS GOING OVER BETTER EVEN THAN WE HAD HOPED.

C E WILSON GENERAL MOTORS CORP

Detroit

GM

COMMUNICATIONS

GENERAL MOTORS COMMUNICATIONS
TRANSPORTATION BUILDING
17th & H STREETS, N. W.
RE. 3551 WASHINGTON, D. C.

50

WASHINGTON, D.C. 4
APR 16 8-PM 1942

MR HENREY MORGENTHAU JR

TREASURY DEPARTMENT

WASHINGTON, D. C.

April 16, 1942

Dan Bell

Secretary Morgenthau

On the meeting which you have today with Isbey from Detroit, please invite John McKee of the Federal Reserve Board to sit in so he can familiarize himself with our troubles and help us. I expect to ask him to go to Detroit if we cannot clean up the trouble from here. If I should decide to go to Detroit, I'd take McKee with me. I'd like to have him kept posted.

finished 4/17/42

52

Mr. Houghteling revised this over the telephone. Mr. Kuhn has approved.

Language in last two lines is to take care of goal set by U.A.W., C.I.O.

official

MR. WALTER P. REUTHER
DIRECTOR OF THE GENERAL MOTORS DEPT   APRIL 16,1942
INTERNATIONAL UNION, U.A.W., C.I.O.
DETROIT MICHIGAN

I HAVE REVIEWED THE PLAN TO ASSIST GENERAL MOTORS EMPLOYEES IN THEIR PURCHASE OF WAR BONDS. I AM CONFIDENT THAT THE MEMBERS OF YOUR UNION WHO ARE EMPLOYEES OF GENERAL MOTORS WILL COOPERATE FULLY IN THIS JOINT EFFORT OF GOVERNMENT, LABOR AND MANAGEMENT DURING THE DRIVE FOR VICTORY IN OUR SURVIVAL WAR. I AM SURE THAT YOUR MEMBERS WANT TO HOLD AN INVESTMENT IN OUR WAR EFFORT AND I HAVE CONFIDENCE THAT THE SPLENDID GOAL WHICH YOU HAVE VOLUNTARILY SET FOR YOURSELVES WILLBE ATTAINED

HENRY MORGENTHAU JR

7K
Dm.

Mr. Houghteling revised this over the telephone. Mr. Kuhn has approved. 54

Language in last two lines is to take care of fact that this Union has not yet set a goal.

OFFICIAL

MR. JAMES J. MATLES
DIRECTOR OF ORGANIZATION APRIL 16,1942
UNITED ELECTRICAL, RADIO AND MACHINE WORKERS UNION
261 - 5th AVENUE, NEW YORK, N.Y.

I HAVE REVIEWED THE PLAN TO ASSIST GENERAL MOTORS EMPLOYEES IN THEIR PURCHASE OF WAR BONDS. I AM CONFIDENT THAT THE MEMBERS OF YOUR UNION WHO ARE EMPLOYEES OF GENERAL MOTORS WILL COOPERATE FULLY IN THIS JOINT EFFORT OF GOVERNMENT, LABOR AND MANAGEMENT DURING THE DRIVE FOR VICTORY IN OUR SURVIVAL WAR. I AM SURE THAT YOUR MEMBERS WANT TO HOLD AN INVESTMENT IN OUR WAR EFFORT AND I HAVE CONFIDENCE THAT WITH YOUR COOPERATION THE GOAL OF THIS DRIVE WILL BE ATTAINED.

HENRY MORGENTHAU JR.

I.C
Hmn.

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE April 16, 1942

TO Secretary Morgenthau

FROM Ferdinand Kuhn, Jr.

I wonder if you could ask the President as soon as possible whether he would give a very brief talk of one and a half or two minutes for the newsreels next Tuesday, April 21st. This talk would appear on more than 8,000 screens on April 28th, the day after the President's broadcast speech. It would be a direct appeal to the movie audiences to buy bonds every pay day.

We need such a separate appeal, with the widest possible coverage, because newsreels of the President's broadcast on the 27th will appear only in a few hundred leading theatres immediately. There is always a time lag in the distribution of ordinary newsreels, and it is this time lag which we are trying to overcome.

F. K.

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE April 16, 1942

TO Secretary Morgenthau

FROM Mr. Haas

1. Attached to this memorandum are tables showing (1) the number of agents qualified to issue Defense Savings Bonds, Series E, at the close of business on April 11, classified by type of agent, by Federal Reserve Districts, and (2) the number of such agents on selected dates since May 7, 1941.

2. Agents, other than post offices, qualified to issue Series E savings bonds numbered 21,012 on April 11, an increase of 121 since April 4.

3. On April 11, there were 1,050 corporations qualified to issue Series E savings bonds on payroll allotment plans in accordance with the instructions contained in your telegram of December 27 to the Federal Reserve Banks. This represented an increase of 70 corporations over last week.

Attachments

Number of agents qualified to issue Series E
Savings Bonds, May 7, 1941
to date

	1941		1942				
	May 7	Sept. 30	Jan. 3	Jan. 31	Feb. 28	March 28	April 11
Commercial and savings banks...	7,676	11,571	13,688	14,097	14,240	14,331	14,368
Building and loan associations.	739	1,481	2,064	2,434	2,560	2,632	2,645
Credit unions..................	8	389	1,368	2,080	2,479	2,695	2,748
Other corporations 1/..........	-	-	-	351	686	931	1,050
Investment industry............	-	-	-	37	63	66	65
All others.....................	7	27	28	99	137	135	136
Total other than post offices.	8,430	13,468	17,148	19,098	20,165	20,790	21,012
Post offices...................	15,812	16,429	16,883	17,123	17,928	18,208	18,305
Grand total....................	24,242	29,897	34,031	36,221	38,093	38,998	39,317

Office of the Secretary of the Treasury,
Division of Research and Statistics.

April 16, 1942

1/ In accordance with telegram of December 27, 1941.

Classification of the number of agents qualified to issue Series E Savings Bonds, on April 11, 1942

	Banks	Building and loan associations	Credit unions	Other corporations 1/	Investment industry	All others 2/	Total
Corporations and associations:							
Federal Reserve District of:							
Boston....................	837	252	230	77	1	14	1,411
New York..................	1,166	257	425	117	17	69	2,051
Philadelphia..............	855	115	124	217	-	-	1,311
Cleveland.................	1,189	391	351	58	7	2	1,998
Richmond..................	1,029	196	149	46	8	1	1,429
Atlanta...................	1,030	165	194	29	-	-	1,418
Chicago...................	2,373	484	284	322	17	28	3,508
St. Louis.................	1,402	164	81	51	7	1	1,706
Minneapolis...............	1,283	60	87	8	-	3	1,441
Kansas City...............	1,789	194	217	24	2	6	2,232
Dallas....................	864	124	251	64	3	9	1,315
San Francisco.............	551	243	355	37	3	3	1,192
Subtotal..............	14,368	2,645	2,748	1,050	65	136	21,012
Post offices..............	-	-	-	-	-	-	18,305
Grand total...............	14,368	2,645	2,748	1,050	65	136	39,317

Office of the Secretary of the Treasury,
Division of Research and Statistics.

April 16, 1942

1/ In accordance with telegram of December 27, 1941.
2/ Except post offices.

CONFIDENTIAL

UNITED STATES SAVINGS BONDS

Comparative Statement of Sales During
First Thirteen Business Days of April, March and February 1942
(April 1-15, March 1-16, February 1-16)
On Basis of Issue Price

(Amounts in thousands of dollars)

Item	Sales			Amount of Increase or Decrease (-)		Percentage of Increase or Decrease (-)	
	April	March	February	April over March	March over February	April over March	March over February
Series E - Post Offices	$ 39,205	$ 47,264	$ 54,614	-$ 8,059	-$ 7,350	- 17.1%	- 13.5%
Series E - Banks	115,418	138,765	207,044	- 23,347	- 68,279	- 16.8	- 33.0
Series E - Total	154,623	186,029	261,658	- 31,406	- 75,629	- 16.9	- 28.9
Series F - Banks	19,333	22,911	32,759	- 3,578	- 9,848	- 15.6	- 30.1
Series G - Banks	83,324	102,970	160,908	- 19,646	- 57,938	- 19.1	- 36.0
Total	$257,280	$311,910	$455,324	-$ 54,630	-$143,414	- 17.5%	- 31.5%

Office of the Secretary of the Treasury, Division of Research and Statistics. April 16, 1942.

Source: All figures are deposits with the Treasurer of the United States on account of proceeds of sales of United States savings bonds.

Note: Figures have been rounded to nearest thousand and will not necessarily add to totals.

CONFIDENT

UNITED STATES SAVINGS BONDS

Daily Sales - April, 1942
On Basis of Issue Price

(In thousands of dollars)

Date	Post Office Bond Sales Series E	Bank Bond Sales				All Bond Sales			
		Series E	Series F	Series G	Total	Series E	Series F	Series G	Total
April 1942									
1	$ 2,476	$ 10,517	$ 2,380	$ 9,608	$ 22,504	$ 12,993	$ 2,380	$ 9,608	$ 24,980
2	2,999	8,264	2,119	7,570	17,953	11,263	2,119	7,570	20,953
3	3,222	7,572	1,185	6,235	14,992	10,794	1,185	6,235	18,214
4	2,778	9,292	1,387	5,334	16,013	12,070	1,387	5,334	18,790
6	4,961	13,035	2,329	8,027	23,391	17,996	2,329	8,027	28,352
7	2,958	5,722	834	8,983	15,539	8,680	834	8,983	18,497
8	2,309	9,610	1,142	6,562	17,314	11,919	1,142	6,562	19,623
9	2,906	9,304	955	5,715	15,974	12,210	955	5,715	18,880
10	2,730	8,052	1,573	5,261	14,885	10,782	1,573	5,261	17,615
11	2,150	5,224	668	2,720	8,613	7,374	668	2,720	10,762
13	4,619	17,572	2,432	8,604	28,609	22,192	2,432	8,604	33,228
14	2,513	6,152	1,076	3,333	10,561	8,665	1,076	3,333	13,074
15	2,584	5,102	1,251	5,374	11,728	7,686	1,251	5,374	14,312
Total	$ 39,205	$115,418	$ 19,333	$ 83,324	$218,075	$154,623	$ 19,333	$ 83,324	$257,280

Office of the Secretary of the Treasury, Division of Research and Statistics. April 16, 1942.

Source: All figures are deposits with the Treasurer of the United States on account of proceeds of sales of United States savings bonds.

Note: Figures have been rounded to nearest thousand and will not necessarily add to totals.

April 16, 1942
5:05 p.m.

HMJr: What's this thing with the Post Office and Detroit, you know, and that business?

Ted Gamble: Yes. Do you want the whole story on it?

HMJr: Well, no, I just wanted.....

G: Well, briefly, here is the problem. They - it's a second-class post office. It does not have the facilities to issue those bonds to General Motors.

HMJr: Yeah.

G: And Frank's complaint is - Iseby's - that they have advised General Motors that they can no longer handle this job, that they'll have to go direct to the Federal Reserve Bank in Detroit, which is really the sensible thing for them to do.

HMJr: I see.

G: We were trying to get a little bit more information on it before I reported to you on it.

HMJr: Well, now, Mr. Mills is going to - if I can get him a seat on a plane - is going out tonight.

G: Yes.

HMJr: So he'll see you before he goes.

G: Fine.

HMJr: But.....

G: But I think this is a matter - Mr. Graves is back this afternoon - and I had him - I checked with him on it, and he talked to Mr. Ironsides of the Post Office Department about it, and that is the whole story on it.

HMJr: All right.

G: In other words, we could do this, which would not be a proper request, I don't think; we'd have to ask the Post Office Department to depart from all of their rules and regulations and probably hire fifty or sixty people out there in that little Post Office to do it.

HMJr: No.

G: And I don't think we want to do that.

HMJr: No.

G: Because we'd have that come up all over the United States with these thirty-five thousand corporations.

HMJr: That's right.

G: And it can be done very efficiently by the Federal Reserve of Detroit. Mr. Sihler out in Chicago, who's in charge of that area, has done a splendid job.

HMJr: Good.

G: And I think that's the whole story, and I'll give it to Mr. Mills.

HMJr: And you say Graves is back.

G: Yes, sir.

HMJr: Good.

G: And he's feeling pretty good.

HMJr: Good. I'll see him before I go.

G: All right, sir.

HMJr: Thank you.

G: Good-bye.

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE April 16, 1942

TO Secretary's files

FROM Ferdinand Kuhn, Jr.

Mr. William S. Rainey has been instructed to handle the press in New York for Mrs. Morgenthau.

Memo 4/16

April 16, 1942.

Ferdinand Kuhn

Secretary Morgenthau

War Savings Bonds asked Mrs. Morgenthau to make this speech Friday. Somebody should be there to look after the Press for her. They've been calling her constantly. I think the easiest way would be to say that she would see any of these newspaper men or women after she is through speaking - after the luncheon. Please get in touch with New York and find out if they have any competent Press person up there who could look after Mrs. Morgenthau, and let me know before lunch-time today.

Taken care of. Per Kuhn - 4/16/42

66

Dear Mr. Kuhn:

Here is my try at the talk you wanted me to do. If it does not hit the mark you can throw it out and if you want me to make another try let me know.

Joseph Gaer

approx 4/16/42

This broadcast celebrates the completion of twenty-five years of communal service on the part of the Jewish Welfare Board.

Twenty-five years ago, during the first World War, the Jewish Welfare Board was organized as a service agency. It had two main objectives: One was to minister to the religious interests of Jewish soldiers; the other, and by far the most important, was to help supply recreational and social needs of <u>all</u> men in uniform.

When the war was over, the Jewish Welfare Board became the parent organization of the Young Men's and Young Women's Hebrew Associations of our country, the Jewish Community Centers and various other groups fostering the growth of Jewish cultural life.

Now we are at war again. And again the Jewish Welfare Board has assumed its full wartime duties. It joined hands with other organizations through the USO and partakes to the limits of its facilities and abilities in making <u>all</u> servicemen -- soldier and sailor, marine and aviator -- feel at home wherever they are.

The services of this Board, in a sense, reflect the essential unity of our nation in time of emergency. In time of peace the Board is concerned primarily with Jewish problems and nurtures the spiritual strength of our youth. Through various activities it stimulates pride in our great moral heritage and encourages the achievement in our times and in our country of greater self-fulfillment. In time of war the Jewish Welfare Board at once unites with all other agencies to do the utmost for our military forces in recognition of the fact that the sacrifices we civilians must make in the war effort pale into insignificance by comparison with the sacrifices made by the men in uniform.

Our enemies point to our peacetime differences in the hope that they can divide us in wartime. What they fail to realize is that the freedom enjoyed by every creed and every organization in our nation during peacetime creates precisely that unity which we find now in the war effort. Not in spite of, but because of -- because of the freedoms we all enjoy to develop our spiritual differences in peacetime -- we stand welded together in this emergency. The Jewish Welfare Board takes its place among the service agencies in the same way and in the same spirit as our soldiers and sailors are taking their posts to meet the enemy without a thought of difference, remembering only our common cause and our common faith in its justice.

In this war effort there are no Jews and there are no Non-Jews, there are no whites and there are no negroes, there are no Slavs and there are no Nordics. In this country and during this emergency we are all Americans only -- who know our strength and realize clearly what we are defending and what we are fighting for. Thus we shall stand united unto victory.

APR 16 1942

My dear Mr. Robertson:

This is in reply to your letter of April 8, 1942, relating to Treasury Form 990.

Form 990 was prescribed pursuant to Treasury Decision 5125. This Treasury Decision, in turn, was issued pursuant, primarily, to the authority contained in section 62 of the Internal Revenue Code which states that:

> "The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter."

Organizations are entitled to exemption under section 101 of the Internal Revenue Code only if they meet the standards of exemption therein set forth in the various subdivisions. While the Treasury Department has conducted spot checks from time to time to ascertain whether organizations claiming exemption were properly entitled thereto, such a method has obvious disadvantages. Considerable study was therefore given to the feasibility of developing a more systematic method of checking upon the organizations claiming exemption under this section.

A system of annual reports under which the organizations would provide the information necessary to a determination of the proper applicability of the section was thought to be the most desirable method of attaining this objective. It was recognized, however, that because of the large number of organizations falling under section 101, the advantages of an annual reporting system might be lost through the accumulation of a tremendous number of returns. It was therefore decided to limit the requirement of annual returns at the start to those subdivisions in which the most difficulty had been experienced in the application of the section. The Bureau of Internal Revenue has found that subdivisions (6), (7), (8) and (9) present the largest number of problems under this section. Thus, it is much more difficult to ascertain whether an organization is operated exclusively for educational or charitable purposes (section 101(6)), is a business league (section 101(7)), is operated exclusively for the promotion of social welfare (section 101(8), or is operated exclusively for pleasure or recreation (section 101(9)), than whether the organization is a fraternal beneficiary society, a labor organization or a domestic building and loan association. At the same time, the number of organizations claiming exemption under these subdivisions is not so large as to prevent intelligent examination of the returns that would be filed.

The selection of the subdivisions specified in Treasury Decision 5125 was based upon the considerations mentioned above. This Decision is not intended, however, to represent a final disposition of this problem. The experience which we obtain from the first year's returns under the Decision will enable us to determine whether the requirement of filing may not be relaxed as to some of the subdivisions or organizations by requiring returns at less frequent intervals than a year, or perhaps eliminated entirely in some instances. At the same time, the results of our examination may indicate the desirability of extending the principle of information returns to other subdivisions or organizations.

I trust that this explanation of the principle underlying the Decision and its background will be of assistance to you.

Sincerely yours,

Secretary of the Treasury.

Honorable A. Willis Robertson,
House of Representatives,
Washington, D. C.

SSS:hdr 4-14-42

TO: Mrs Klotz 74

The letter looks OK to me I have initialed. H.G.

FROM: MR. GASTON

DEFENSE SAVINGS STAFF
709 12th St. N.W.

ROUTING SLIP

( ) For Immediate Action ( ) For Files

) For Your Attention ( ) Please Return

( ) Prepare Reply

Mr. Adams	Mr. Johnston, Gale F.
Mr. D. W. Bell	Mr. Johnston, Lyle
Mr. Chas. Bell	Mrs. Jones
Mr. Broughton	Mr. Kilby
Mr. Buckley	Mr. Kuhn
Mr. Callahan	Mr. Mahan
Miss Chauncey	Mr. G. F. Milton
Mr. Cole	Mr. Olney
Mr. Cox	Mr. Powel
Mr. Cunningham	Mrs. Ready
Mr. Duffus	Mrs. Russell
Mr. Edwards	Mr. Schram
Mrs. Evans	Mr. Sloan
Miss Finucane	Mr. Sparks
Mr. Graves	Mr. Thompson
Mr. Houghteling	Mr. Arthur Wilson

Mrs. Klotz

Read, approved and initialed

J. L. Houghteling

A. WILLIS ROBERTSON
SEVENTH VIRGINIA DISTRICT

76

COMMITTEES:
WAYS AND MEANS
CHAIRMAN, SELECT CONSERVATION COMMITTEE

Congress of the United States
House of Representatives
Washington, D. C.

April 8, 1942

Hon. Henry Morgenthau, Jr.,
Secretary of the Treasurer,
Washington, D. C.

Dear Mr. Secretary:

Kindly advise me upon what statutory authority you relied in requiring certain non-profit organizations exempt under Section 101 from the payment of income taxes to furnish to you on Treasury form No. 990 a detailed statement of receipts and disbursements, and whether it was by accident or design that this demand was made upon all associations of manufacturers but upon no labor unions.

Cordially yours,

A. Willis Robertson

A. Willis Robertson.

APR 16 1942

Dear Jesse:

I have your letter of April 14th with respect to the problem of substitution of silver for copper in plants engaged in war production.

A few weeks ago, as you are aware, the War Production Board advised us of the serious shortage of copper and suggested that available silver stocks of the Government be used in industrial plants, both Government and privately owned, in substitution for copper.

The War Production Board advised us that the silver which was to be used mainly in the form of bus bars, would not be used up or become part of the product of the plant but would be handled in such a way as to permit the silver to be returned to the Government at the termination of the war. The proposal envisaged that appropriate safeguards would be adopted to insure the return of the silver to the Treasury and to make good for any silver that might be lost through wear or tear or for other reasons.

The Treasury Department, after studying the matter, concluded that there was legal authority to permit the use of the free silver stocks of the Treasury on this basis. The Attorney General rendered an opinion concurring in this view. The proposal was then submitted to the President and he approved it. The Treasury then announced its willingness to permit the use of this silver on such basis and engaged in further discussion with representatives of the War Production Board and the Defense Plant Corporation.

If you do not think that the Defense Plant Corporation should enter into such an arrangement, I believe you should notify the War Production Board promptly. The War Production Board may then wish to ascertain if there are any other channels through which the silver can be used in substitution for copper on the basis proposed.

To keep the War Production Board advised, I am sending a copy of this letter and your letter to me, to Donald Nelson.

Very truly yours,

(Signed) H. Morgenthau, Jr.

Secretary of the Treasury.

The Honorable,

The Secretary of Commerce.

EHF: kfa 4-16-42

by [illegible] 2 45 pm 4/16

N.M.C.,
Copies to Foley

APR 16 1942

Dear Donald:

In connection with the proposal to use the free silver stocks of the Treasury in lieu of copper for bus bars and other purposes, I am enclosing for your information copy of a letter dated April 14, 1942, which I have received from Jesse Jones, and a copy of my reply.

The Treasury has been prepared to go forward promptly in working out arrangements for the use of free silver stocks in lieu of copper on the basis envisaged in discussions between our people, namely, that the Treasury would be saved harmless from any loss of silver resulting from the conversion and use in the form of bus bars.

You may wish to take this matter up with Jesse Jones and let me know if any satisfactory arrangements can be worked out for the use of the silver on this basis.

Very truly yours,

(Signed) H. Morgenthau, Jr.

Secretary of the Treasury.

Hon. Donald M. Nelson,
Chairman,
War Production Board,
Washington, D. C.
BB:EHF:vls - 4/16/42

N.B.C.
Copies to Foley

By spec messenger Brown
4/16/42
2:45

DEPARTMENT OF THE INTERIOR

INFORMATION SERVICE

OFFICE OF PETROLEUM COORDINATOR

FOR RELEASE THURSDAY, APRIL 16, 1942.

The following statement was issued jointly today by Petroleum Coordinator Harold L. Ickes, Chairman Donald M. Nelson of the War Production Board, and Civilian Supply Director Leon Henderson:

"A curtailment of one-third on filling station supplies of gasoline went into effect today in the 17 Atlantic Coast states, the District of Columbia, and the states of Oregon and Washington. This restriction is the most severe which has yet been applied to the American public's supply of motor fuel.

"The curtailment probably will affect all motorists in one degree or another. In some instances, it will represent definite inconvenience.

"The Federal Government has been forced, by the circumstances of war, to take this step. The continued smooth functioning of civilian life in the affected areas will be dependent upon the foresight, the cooperation, and the willingness of the American people to adapt themselves to a situation which they never before have had to face. The Government is calling upon our people to exercise that foresight, cooperation and spirit of willingness.

"This step has been forced by the diversion to military service of tank ships which normally supply the affected areas with gasoline and oil; and to a minor extent to sinkings by enemy action. Meanwhile, tank cars, pipelines and barges are being pressed into service to the uttermost to carry oil necessary to run our war plants and to provide as much as possible for civilian needs. The restrictions will be kept in effect until such time as the transportation situation is improved sufficiently to permit relaxation.

"Full cooperation by the public is of the utmost importance and we expect that it will be cheerfully given particularly when it is realized that American seamen's lives are at stake every time a tank ship makes an ocean voyage. Minimizing of non-essential consumption will be a major contribution that the public can make.

"We are sure the American people prefer to see their own bombers in the air to unnecessary use of their cars."

P.N. 185119

APR 16 1942

Secretary Morgenthau

E. H. Foley, Jr.

In addition to the information on Batt in your memorandum of January 30 to the President, the American Bosch investigation has disclosed the following which may be used as a background in the event you decide to call in and question Monnet.

A letter written by Hess, President of American Bosch, to Batt on January 8, 1938, indicates that Batt knew of the German control of American Bosch at the time when the stock was nominally held by the Dutch interests. In this letter, referring to American Bosch, Hess said:

> "The general set-up is exactly as you described it, with control (70) in Mendelssohn & Co, Rotterdam [sic] -- which means German Bosch and Murnane acts for them. He has apparently, as much authority as could be expected under such circumstances."

Batt's reply to this letter, written two days later, did not dispute this statement and made no reference to it.

You will recall that Murnane became a director of American Bosch Corporation in 1935 and Chairman of the Board in 1937. Shortly after Murnane had reorganized American Bosch in 1938, Batt became a member of the Board where he remained until he resigned in March 1941. In 1940, after the Mendelssohn interests in American Bosch were sold to the Stockholm Enskilda Bank which is owned by the Wallenberg family, Murnane was designated as a voting trustee of the Swedish interests of American Bosch (approximately 70% of the voting stock).

In early 1940 American Bosch failed in its efforts to obtain Army contracts because of its German connections. Hess turned to Batt for advice and assistance and in March 1940 Batt wrote to Assistant Secretary of War Louis Johnson on behalf of American Bosch.

If you decide to see Monnet, I suggest you question him about Batt along the following lines:

a. The relationship between Murnane and Batt.

b. What Monnet knows about German interests in American Bosch, both at the time when Murnane became a director in 1935 and the present time.

c. Conversations with Murnane or Batt concerning German interests in American Bosch.

(Initialed) E. H. F., Jr.

MQ:EHF:vls - 4/14/42

Personal and
Confidential.

April 16, 1942.

The Honorable Harold L. Ickes,
Secretary of the Interior,
Washington, D.C.

My dear Mr. Secretary:

Our men have apparently reached a stalemate in the matter involving bank transactions of Captain Torkild Rieber in New Orleans, which were the subject of your telephone conversation with Secretary Morgenthau on March 19 and your letter of March 25, enclosing a letter dated March 22 from Kenneth Leslie, Editor of The Protestant.

The Whitney National Bank of New Orleans reports that Rieber never had an account there. Our men have thoroughly examined all transactions in the bank around September 23, 1940, which was the date given by Mr. Leslie, with negative results. The F.B.I. at New Orleans denies having had the matter brought to their attention in January, 1941, and denies knowledge of any such photostats as are mentioned in Mr. Leslie's letter. The F.B.I. office at New Orleans, however, has recently had a tip similar to that given to us and is understood to be pursuing an investigation.

The story of the payment of $20,000, involving the three individuals mentioned in Mr. Leslie's letter, was first brought to our attention by copies of reports of Military Intelligence, which were received in July and August, 1941. The first report stated that the transaction was supposed to have taken place in a New York bank, but a later report said that it occurred in a New Orleans bank. H. F. Baker, Chief of Police of Port Arthur, Texas, was specifically mentioned as the final recipient.

We have instituted a general tax inquiry as to Rieber's affairs and his accounts disclosed to us have been examined and those of his daughter as well without revealing any trace of a transaction such as that described. We have, however, learned the following facts: In April, 1941, Rieber invested $7,500 in an interest in the Charleston Shipbuilding and Drydock Company and in February, 1942, he became a director of the Southeastern Shipbuilding Corporation at Savannah, Georgia. Both companies are building ships under Government emergency contracts. From August, 1940, to April, 1941, Rieber was receiving a salary of approximately $8,000 a month from the Texas Company and since the latter date has been receiving $4,000 per month. The Assistant Secretary of the Company says that the compensation currently being paid to Rieber is for his services as an advisor. Rieber, however, told our agent that he is being paid because of his long service and in consideration of his not becoming affiliated with a competitive company.

I know you will understand that because of its source all of the above information is to be treated as entirely confidential.

Very truly yours,

(Signed) Herbert E. Gaston

Herbert E. Gaston
Assistant Secretary of the Treasury.

April 14, 1942.

MEMORANDUM

TO: Secretary Morgenthau
FROM: Mr. Gaston

This refers to the matter discussed in your telephone conversation with Secretary Ickes on March 19 and Secretary Ickes' letter to you of March 25, enclosing a letter, dated March 22, to him from Kenneth Leslie, Editor of the Protestant Digest, New York.

The telephone conversation, in which Secretary Ickes cited Leslie as his source of information, told of a supposed deposit of $20,000 by Torkild Rieber, formerly Chairman of the Board of the Texas Company, in a bank account at the Whitney National Bank, New Orleans, some time in September, 1940, and the payment of an equal amount on the same day to one Baker, Campaign Manager for Martin Dies. The check deposited by Rieber was said to have been made out by Dr. Gerhardt A. Westrick, a known German agent. Leslie's letter of March 22 makes the date of the transactions definite as September 23, 1940, and asserts that photostats of the checks involved had been delivered to the New Orleans field office of the F.B.I. in January, 1941, or around that date.

We have investigated thoroughly in New Orleans and have drawn a complete blank. Rieber has never had a bank account with the Whitney National Bank. Transactions around the date mentioned have been thoroughly examined without revealing any record of an interchange of checks. The F.B.I. denies having received any such photostats as those mentioned in 1941, or at any other time. The same tip has recently been given to them and they have been - and probably still are - working on the case.

The alleged payment of $20,000 was first brought to the attention of this Department by the Military Intelligence Division of the War Department in July and August, 1941. These reports first stated that the transaction took place in a New York bank and it was subsequently stated that it was supposed to have occurred at a New Orleans bank. Instead of the name "Baker", Campaign Manager, their reports specifically named H. F. Baker, Chief of Police of Port Arthur, Texas. Port Arthur is in Congressman Dies district and New Orleans informs us that Chief of Police Baker was Campaign Manager for Dies.

I first mentioned Dr. Westrick to you in a memorandum dated August 19, 1940. (He was at that time referred to in the newspaper as Adolf Hitler's special emissary to see that economic ties between the United States and Germany remained unbroken during the European war). I attached a report by a secret service agent conveying information received from an informant relative to Dr. Westrick's contacts with certain business men. Copies of the report were sent to Mr. Merle Cochran, the State Department and the Federal Bureau of Investigation.

The Intelligence Unit and the Income Tax Unit have been pursuing the investigation of Rieber's tax returns.

A thorough examination of Rieber's bank accounts and stock-trading accounts, recently made by a revenue agent in connection with the verification of his returns for the years 1939, 1940 and 1941, failed to disclose any trace of the funds in question or of bank transactions outside of New York City. The accounts of the taxpayer's daughter, Miss Ruth Rieber, were also examined, with negative results.

An officer of the Whitney National Bank advised that there was no record of a summons being presented by Special Agent Larry Smith of the Federal Bureau of Investigation, as had been reported. He is not known at the local office of that organization. However, the cashier stated that on March 28, 1942, Special Agent J. W. Core of the Federal Bureau of Investigation requested the production of records pertaining to the same transactions that our agent was looking for about the same time.

The revenue agent learned from Mr. Rieber that in April, 1941, he and several associates purchased the Charleston Shipbuilding and Drydock Company, his interest being approximately nine percent, at a cost of $7,500. Mr. Rieber also told the agent that in February, 1942, he became a director of the Southeastern Shipbuilding Corporation, Savannah, Georgia. Both companies are building ships under emergency contracts.

Other information concerning Mr. Rieber's current activities is contained in a letter found among papers withheld by a Customs officer from Dr. Luiz Felippe de Souza Sampaio upon his departure from Miami, enroute to Brazil. This letter, dated January 15, 1942, addressed to Dr. Sampaio by Mr. Benno Berger, New York, N.Y., states: "My friend, Capt. Rieber, ex-president of Texas Oil, is the president of Barber Asphalt Co. and Trinidad Asphalt Co. and he also controls these firms." Further, in a letter dated March 25, 1942, from Mr. Alexander Uhl, Foreign News Editor of P.M., to a correspondent in Mexico City, the writer asks if it is true that "Ben Smith, former Ambassador Joe Kennedy, Cap Rieber and Paul Shields" have bought a bank, a railroad and a newspaper in Mexico City.

Mr. Rieber explained to the revenue agents that his resignation from The Texas Company, in August, 1940, was brought about as a result of his endeavoring to get the German Government to release several oil tankers which it had been constructing for the Company.

The revenue agent further reports that from August, 1940, to April, 1941, The Texas Company paid Mr. Rieber approximately $8,000 a month, and that since the latter date it has paid him $4,000 per month. Mr. Walter Elicker, Assistant Secretary of the Company, informed the agent that these payments were in consideration of Mr. Rieber's acting in an advisory capacity. However, the latter told the agent that he was being paid because of his long service and also in consideration of his not becoming affiliated with a competitive company.

HG

STRICTLY CONFIDENTIAL

Bottom cargo for Russians sent from mills to Philadelphia,

total April 5 to 11 and daily April 12 to 15, 1942

Name of company and commodity	Tonnage: Total April 5 to April 11	Sunday April 12	Monday April 13	Tuesday April 14	Wednesday April 15
Brass					
American Brass Co.	513				
Chase Brass & Copper Co.	58		75	39	92
Revere Copper & Brass Co.	176				
Scovill Manufacturing Co.	97		58	36	35
Wallingford Steel Co.	16				
Copper					
American Brass Co.					
Anaconda Wire & Cable Co.	24		19		
Nickel					
International Nickel Co.	200				
Steel					
Alan Wood Steel Co.	152		405	365	115
Allegheny Ludlum Steel Co.	440	144	94	154	17
Armco International Co.	1,762		300	213	143
Bethlehem Steel Co.	2,331	128	103	103	217
Brainerd Steel Co.	50				
Cold Metal Products Co.	50				
Collyer Insulated Wire Co.	15			86	
Elliott Bros.					
Great Lakes Steel Corp.	1,420	37			65
Inland Steel Co.	547				
Johnson Steel & Wire Co.	24				55
Jones & Laughlin Steel Corp.	837		41		
Keystone Steel & Wire Co.	330		109		58
Madison Wire Co.	81			34	
McLouth Steel Co.	622	135	52	76	44
National Tube Co.	185				
New England High Carbon Wire Co.	9				
Newport Rolling Mills	90				85
Otis Steel Co.	772		99	102	52
P & M Co.	255				
Pittsburgh Steel Co.	457				
Republic Steel Corp.	3,838	1,074	254	1,258	862
Seneca Steel Co.	30				
Sharon Steel Co.			37		
Superior Steel Co.	217				25
Thomas Steel Co.	234		60		
Thompson Steel & Wire Co.	200			98	
Union Drawn Steel Co.	460			136	
U. S. Steel Export Co.	309		269	1,122	701
Universal Cyclops Co.	9				
Vulcan Crucible Co.	1				
Wallingford Steel Co.	138			52	
Weirton Steel Co.	231		71		74
Wheeling Steel Corp.	1,365		193	132	
Youngstown Sheet & Tube Co.	221	58	29	199	309
Miscellaneous					
Electro Co.	130				
Vanadium Corp.	56				
Total	18,952	1,576	2,268	4,205	2,949

Office of the Secretary of the Treasury,
Division of Research and Statistics.

April 16, 1942

Source: Procurement Division, Treasury Department.

STRICTLY CONFIDENTIAL

Bottom cargo for Russians sent from mills to Baltimore,

total April 5 to 11 and daily April 12 to 15, 1942

Name of company and commodity	Tonnage				
	Total April 5 to April 11	Sunday April 12	Monday April 13	Tuesday April 14	Wednesday April 15
Brass					
American Brass Co.	329		47	45	
Chase Brass & Copper Co.	42				
Steel					
Allegheny Ludlum Steel Co.	11				
Armco International Co.					116
Bethlehem Steel Co.	334		70	141	96
Blair Strip Steel Co.	19		23		33
Brainerd Steel Co.	50				
Colonial Steel Co.	33				
Colorado Fuel & Iron Co.					548
Great Lakes Steel Co.	731		247	45	226
Inland Steel Co.	1,010				
Johnson Steel & Wire Co.	44				25
Jones & Laughlin Steel Corp.	3,342		92	339	167
Otis Steel Co.	293				
P & M Co.	51				
Republic Steel Co.	3,830	253	448	643	689
John A. Roebling & Sons	33				
Seneca Steel Co.	54				37
Sharon Steel Co.	194		71	50	59
Thomas Steel Co.	35				25
U. S. Steel Export Co.	2,736		334	491	285
Weirton Steel Co.	644		106		35
Youngstown Sheet & Tube Co.	1,310	431	710	819	297
Miscellaneous					
McKenna Metals Co.	353				
Total	15,478	684	2,148	2,573	2,638

Office of the Secretary of the Treasury,
Division of Research and Statistics.

April 16, 1942

Source: Procurement Division, Treasury Department.

STRICTLY CONFIDENTIAL

Bottom cargo for Russians sent from mills to New York,
total April 5 to 11 and daily April 12 to 15, 1942

Name of company and commodity	Tonnage				
	Total April 5 to April 11	Sunday April 12	Monday April 13	Tuesday April 14	Wednesday April 15
Brass					
Phelps Dodge Co.	113				
Iron					
Oliver Iron Co.	22				
Steel					
Armco International Co.	530		356	283	252
Bethlehem Steel Co.	123		65		195
Cold Metal Products Co.	53				
Crucible Steel Co.	28			60	
Great Lakes Steel Co.	1,641	230	84	126	
Halcomb Steel Co.	66				34
Heppenstahl Co.	59			46	
Indiana Steel & Wire Co.	135		137		55
Inland Steel Co.	956		1,783		148
Jones & Laughlin Steel Corp.	469		46	46	
Otis Steel Co.	981		90	289	375
P & M Co.	51				
Pittsburgh Steel Co.	1,473				
Republic Steel Co.	391	52		97	52
Sheffield Steel Co.	65				
U. S. Steel Export Co.	3,103	52	597	632	1,224
Washington Tin Plate Co.	34				
Weirton Steel Co.	45				
Wyckoff Drawn Steel Co.	348	166	84	127	42
Youngstown Sheet & Tube Co.	2,939		114	213	
Miscellaneous					
National Standard Co.	54				
Total	13,679	500	3,356	1,919	2,377

Office of the Secretary of the Treasury,
Division of Research and Statistics.

April 16, 1942

Source: Procurement Division, Treasury Department.